

### ARTICLE III. - MINERAL SEVERANCE LICENSE TAX

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**Sec. 19-34. – Statutory Authority.**

This article is adopted pursuant to Virginia Code §§ 58.1-3712, 58.1-3712.1, 58.1-3713, and 58.1-3713.4 and all other applicable sections of Chapters 37 and 39 of Title 58.1 of the Code of Virginia, as amended, whether or not the specific section is cited herein. Such adoption is by reference and is inclusive, including all tax collection and lien enforcement provisions provided by Virginia law. Furthermore, any and all additional and applicable sections of Chapters 37 and 39 of Title 58.1 of the Code of Virginia, as amended, including but not limited to Virginia Code § 58.1-3703.1, are hereby adopted and incorporated herein by reference. Any amendments to any applicable sections of Chapter 37 and Chapter 39 of Title 58.1 of the Code of Virginia, as amended, shall be deemed to be incorporated into this article when they become effective as if they were separately adopted.

**Sec. 19-35. – Effective Date of Amendments.**

(a)

The amendments to this article shall take effect on January 12, 2012.

(b)

All unpaid taxes, pursuant to the County's mineral severance license tax and coal and gas road improvement tax ordinance, owed as of January 12, 2012, shall remain due and payable pursuant to the ordinances in effect prior to January 12, 2012.

(c)

All persons having valid mineral severance licenses on January 12, 2012, pursuant to the County's mineral severance license tax ordinances shall be considered to have similar licenses pursuant to this article until such time as such licenses must be renewed as provided for in Sec. 19-38.

(d)

The penalties for violations of the County's mineral severance license tax and coal and gas road improvement tax ordinance prior to January 12, 2012 shall remain applicable and in full force and effect.

(e)

Notwithstanding the amendments to this article, all assessments and collections of the County's mineral severance license tax and coal and gas road improvement tax prior to January 12, 2012 shall remain applicable and are hereby affirmed and ratified pursuant to appropriate statutory authority.

**Sec. 19-36. - Definitions.**

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

*Closely-held corporation* shall mean a corporation not publicly traded and having twenty (20) or fewer shareholders.

*Coal* shall mean and include any material composed predominantly of hydrocarbons in a solid state.

*Common carrier* shall mean any person involved in any phase of the transportation of coal, oil, or gas within the County or from the County. This includes, but is not limited to, the receiving, collection, or assembly of coal, oil, or gas for conveyance from one mode of transportation to another or to the same mode of transportation, as well as the actual movement of the coal, oil, or gas in shipment.

*Definite place of business* shall mean any location at which occurs a regular and continuous mining operation for thirty consecutive days or more. A definite place of business for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis and real property leased to another person.

*Gas* shall mean any substance or form that is neither liquid nor solid and which is sought for and removed from the earth for the vapor itself and used for lighting, heating, cooking, or any other purpose.

*Gross receipts* shall mean the gross receipts from the sale of coal, oil, or gas severed within the County, which shall be the fair market value of the coal, oil, or gas measured at the time the coal, oil, or gas is utilized or sold for utilization in the County or at the time the coal, oil, or gas is placed in transit for shipment from the County. In any transaction, gross receipts shall not be less than the fair market value for coal, oil, or gas of a similar grade and quality. Any deductions claimed in determining the fair market value shall be in accordance with § 58.1-3712 of the Code of Virginia (1950), as amended.

*Mineral or Minerals* shall mean coal, oil, or gas.

*Mining operation* shall mean any act or activity by which any person becomes an operator as defined in this article.

*Oil* shall mean crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.

*Operator* shall mean any person engaged in the business of severing coal, oil, or gas from the earth in the County, including without limitation any person who (i) has an operating economic interest in coal, oil, or gas severed in the County, or (ii) receives proceeds from the initial sale of the coal, oil, or gas severed in the County. This term may include owners and producers.

*Owner* shall mean the owner of a legal or equitable interest in coal, oil, or gas at the time of severance. This shall include landowners who receive an economic benefit from the removal of minerals from their respective properties.

*Person* shall mean any individual, firm, partnership, corporation, cooperative, joint venture, association, estate, trust, business trust, trustee, trustee in bankruptcy, any person acting under a declaration of trust, executor, administrator, partner, agent, receiver, syndicate, assignee, or other group or combination acting as a unit, in the plural as well as in the singular number.

*Placed in Transit for Shipment from the County* shall mean made ready and available, without further preparation or handling, for final transportation, transfer, or conveyance beyond the jurisdictional boundaries of the County.

*Producer* means any person engaged in severing coal, oil, or gas from the earth in the County, including any owner or operator so engaged.

*Severing, severance, and severed* shall mean the taking of any coal, oil, or gas from any land, soil, or slag piles situated in the County in any manner whatsoever.

(Ord. No. 2-1982, § III, 6-24-82; Ord. No. 1-1987, 1-8-87)

**Sec. 19-37. - Tax levied.**

(a)

A license tax is hereby levied and imposed pursuant to § 58.1-3712 of the 1950 Code of Virginia, as amended, on every operator engaged in the business of severing coal or gas from the earth. Such tax shall be at a rate of 1% of the gross receipts.

(b)

In addition to the taxes levied in subsection A herein, a license tax is hereby levied and imposed pursuant to § 58.1-3713 of the 1950 Code of Virginia, as amended, on every operator engaged in the business of severing coal or gas from the earth, which tax shall be used for local coal and gas road improvements and the Virginia Coalfield Economic Development Authority. Such tax shall be at a rate of 1% of gross receipts.

(c)

In addition to the taxes levied in Subsections A and B herein, a license tax is hereby levied and imposed pursuant to § 58.1-3713.4 of the 1950 Code of Virginia, as amended, on every operator engaged in the business of severing gas from the earth. Such tax shall be at a rate of 1% of gross receipts.

(d)

A license tax is hereby levied and imposed pursuant to § 58.1-3712.1 of the Code of Virginia, as amended, on every operator mining oil. Such tax shall be at a rate of one-half of 1% of gross receipts.

(e)

The foregoing taxes are hereby levied and imposed in addition to all other taxes and fees of every kind now imposed by law upon every operator.

(Ord. No. 2-1982, § I, 6-24-82; Ord. No. 1-1987, 1-8-87; Ord. of 8-10-89; Ord. No. 2-1990, 6-15-90) (Ord. No. 2-1982, § II, 6-24-82; Ord. No. 1-1987, 1-8-87; Ord. of 8-10-89; Ord. No. 2-1990, 6-15-90)

**Sec. 19-38. - Operator's license generally.**

(a)

It shall be unlawful for any person to conduct a mining operation in the County unless that person has obtained a current license to do so issued by the Commissioner of Revenue.

(b)

Every operator shall file with the Commissioner of Revenue an application for a license for each mining operation in the County. A separate license shall be required for each definite place of business and for each operator. Every application shall be signed by each operator, if a natural person; in the case of an association or partnership, by a member or partner; or in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application; or, in the case of any operator an agent designated in a writing filed with the Commissioner of Revenue. Each application shall be accompanied by a list of all those persons known by the signers or their economic interest in the severance. In connection with any such application, the operator shall provide information as the County may require concerning the nature and past gross receipts of the mining operation, the owner, any other operators participating in the mining operation, any persons which are members of an affiliated group of which the operator is a member and to whom the coal, oil or gas was sold or placed into transit for shipment from the County, and all persons having an economic interest in the mining operation.

An operator engaged in two or more mining operations carried on at the same location in the County may elect to obtain one license for all such mining operations if all of the following criteria are satisfied: (1) each mining operation is subject to licensure and has satisfied any requirements imposed by state law or other provisions of this Code; (2) all of the mining operations are subject to the same tax rate, or, if subject to different tax rates, the operator agrees to be taxed on all mining operations at the highest rate; and (3) the operator agrees to supply such information as the County may require concerning the nature of the several mining operations and their gross receipts.

(c)

In the case of an operator who did not have a license to sever coal, oil, or gas in the County in the previous license tax year, such operator shall file its application as provided herein prior to beginning any severance of coal, oil, or gas in the County.

In the case of an operator who had a license or licenses to sever coal, oil, or gas in the County in the previous license tax year, such operator shall file its application for the renewal of such license or licenses on or before March 1 of the current license tax year. In such case, the existing license shall remain in effect until the new license. Issuance of a new license may be conditioned upon receipt by the Commissioner of Revenue of a written report from the County Treasurer documenting the operator's payment of any license taxes due or an arrangement for the payment of any license taxes.

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

(d)

When the required application has been made, the Commissioner of Revenue shall issue to each applicant who has met all of the requirements of this article a separate license for each mining operation within the County, which license shall not be transferable.

(e)

No license shall be issued or reissued under this section to a person who owns, or is an agent for a person who owns, an interest in a mining operation conducted by a person owing delinquent taxes at the time the application is submitted, or to a person who owes, or is an agent for a person who owes, delinquent taxes, and, when such facts are known to the Commissioner of Revenue, he may, at his election, hold the hearing provided for in subsection (f) of this section. An arrangement for payment of delinquent taxes made by the County Treasurer may be treated as payment for the purposes of this section.

(f)

Whenever any person fails to comply with any provision of this article, the Commissioner of Revenue may hold a hearing, after giving such person ten (10) days' notice, in writing, specifying the time and place of hearing and requiring him to show cause why his license should not be revoked or suspended or his application for renewal be denied. The Commissioner of Revenue may revoke or suspend or deny reissuance of any one or more of the licenses held by such person.

(Ord. No. 2-1982, § XIV, 6-24-82; Ord. No. 1-1987, 1-8-87)

**Sec. 19-39. - Operator's returns.**

Every operator required to pay the tax imposed by this article shall, on or before the fifth day of each month, transmit to the Commissioner of Revenue, upon a form furnished by the Commissioner, a return showing (i) the quantities of coal, oil, and gas produced from each mining operation, (ii) the gross receipts from all coal, oil, or gas severed from each mining operation during the immediately preceding calendar month, and (iii) the names and addresses of any owners or other operators participating in each mining operation, any persons who are members of an affiliated group of which the operator is a member and to whom the coal, oil, or gas was sold or placed into transit for shipment from the County, and all persons having an economic interest in the mining operation. In the event that any date on which a return is to be filed falls upon a Saturday, Sunday, legal holiday or other date on which the County Courthouse is closed, then the time for the filing of such return shall be extended until the next day that the Commissioner of Revenue's office is open for business. The tax shall become effective at the time, under the prevailing reasonable standard of the industry, that it can be computed. This return shall be made under oath and subject to the penalty for perjury. The Commissioner of Revenue shall transmit to the County Treasurer forthwith all records related to the taxes owed and payments from each operator.

(Ord. No. 2-1982, § VI, 6-24-82; Ord. No. 1-1987, 1-8-87)

**Sec. 19-40. – Situs of gross receipts.**

(a)

*General rule.* Whenever a license tax imposed by this article is measured by gross receipts, the gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise of a privilege subject to licensure at a definite place of business within the County. In the case of activities conducted outside of a definite place of business, such as during a visit to a customer location, the gross receipts shall be attributed to the definite place of business from which such activities are initiated, directed, or controlled.

(b)

Notwithstanding the provisions of subsection (a) herein, the gross receipts included in the taxable measure for each operator shall be attributed to where that operator's coal, oil, or gas is utilized in the County, is sold for utilization in the County, or is placed in transit for shipment from the County. If more than one such basis for attribution applies to any particular amount of coal, oil, or gas, then the basis at which the gross receipts has the greatest value shall be used.

(c)

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

(d)

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

**Sec. 19-41. - Payment of tax; penalty and interest on delinquencies.**

(a)

At the time of transmitting the return required by Sec. 19-39 to the Commissioner of Revenue, the operator shall remit to the County Treasurer therewith the amount of tax due under the applicable provisions of this article. Failure to remit such tax by the deadline for filing the return required by Sec. 19-39 shall cause such tax to become delinquent.

(b)

A penalty of 10 percent of the tax may be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due dates set forth in this article. Only the late filing penalty shall be imposed by the Commissioner of Revenue if both the application and tax payment are late; however, both penalties may be assessed if the Commissioner of Revenue determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the Commissioner of Revenue, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud or reckless or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax. If any assessment of tax by the Commissioner of Revenue is not paid within 30 days, the County Treasurer may impose a 10 percent late payment penalty. If the failure to file or pay was not the fault of the taxpayer, the penalties shall not be imposed, or if imposed, shall be abated by the Commissioner of Revenue. In order to demonstrate lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond the taxpayer's control.



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

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

(c)

Interest shall be charged on the late payment of the tax from the due date until the date paid without regard to fault or other reason for the late payment. Whenever an assessment of additional or omitted tax by the Commissioner of Revenue is found to be erroneous, all interest and any penalties charged and collected on the amount of the assessment found to be erroneous shall be refunded together with interest on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the refund of any tax from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason. However, 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 that date of payment that created the refund or the due date of the tax, whichever is later. Any interest charged on any late payment or paid on any refund shall be calculated at the same rate charged under Virginia Code § 58.1-3916. No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year.

(d)

The County Treasurer and the Commissioner of Revenue shall reconcile their records monthly concerning the identities of taxpayers, amounts received, outstanding taxes due, and, if applicable, any arrangements made by the County Treasurer for payment of delinquent taxes.

(Ord. No. 2-1982, § VIII, 6-24-82; Ord. No. 1-1987, 1-8-87)

**Sec. 19-42. - Procedure when operator fails to make return or makes incorrect or false return.**

In the event any operator fails to make a return as provided by this article, or makes a grossly incorrect return or a return that is false or fraudulent, it shall be the duty of the Commissioner of Revenue to make an estimate for the taxable period of the fair market value of gross receipts of all such coal, oil, or gas mined or extracted by such operator and assess the appropriate tax, plus penalties and interest in accordance with Sec. 19-41. The Commissioner of Revenue shall give such operator 10 days’ notice in writing requiring such operator to appear before him, with such books, records, and papers as the Commissioner of Revenue may require relating to the business

of such operator for such taxable period, and the Commissioner of Revenue may require such operator or the agents and employees of such operator to give testimony or to answer interrogatories under oath respecting such mining or extraction of coal, oil, or gas or the failure to make a return thereof as provided in this article. If any operator fails to make any such return or refuses to permit an examination of his books, records, or papers, or to appear and answer questions within the scope of such investigation, the Commissioner of Revenue is hereby authorized to make the assessment based upon such information as may be available to him and the County Treasurer may issue a warrant for the collection of any such taxes and penalties so found to be due. The assessment so made shall be deemed prima facie correct. In addition, the Commissioner of Revenue may, upon reasonable notice, assess taxes for such mining operation against any other person liable for the tax, including owners and producers.

(Ord. No. 2-1982, § XI, 6-24-82; Ord. No. 1-1987, 1-8-87)

**Sec. 19-43. - Procedure when operator ceases operations.**

If the holder of a license issued under this article ceases to conduct a mining operation, the license shall thereupon expire, and such license holder shall inform the Commissioner of Revenue in writing within 30 days thereafter that he has ceased to conduct such mining operation. A copy of such report, upon receipt thereof, shall be forwarded to the County Treasurer.

(Ord. No. 2-1982, § V, 6-24-82; Ord. No. 1-1987, 1-8-87)

**Sec. 19-44. - Bond or deposit of securities to assure payment of tax.**

(a)

The Commissioner of Revenue may, when in his judgment it is necessary and advisable to do so in order to secure the collection of the tax levied by this article, require any person subject to such tax to file with him a bond secured by a surety company authorized to do business in this commonwealth, as surety, in such reasonable amount as the Commissioner of Revenue may fix, to secure the payment of any tax, penalty, or interest due or which may become due from such person under this article. In lieu of such bond, securities approved by the Commissioner of Revenue may be deposited with the County Treasurer, which securities shall be kept in the custody of the County Treasurer and shall be sold by him, at the direction of the Board of Supervisors, at public or private sale, without notice to the depositor thereof, if it becomes necessary in order to collect any tax, penalty, or interest due the County under this article. Upon any such sale, the surplus, if any, above the amounts due under this article shall be returned to the person who deposited the securities.

(b)

The securities authorized by this section may include without limitation stock in any corporation engaged in a mining operation, a contract or lease for mining rights, a deed of trust in real estate, a security interest in personal property, or other such devices to ensure the payment of debt.

(Ord. No. 2-1982, § XII, 6-24-82; Ord. No. 1-1987, 1-8-87)

**Sec. 19-45. - Records of producers, owners, and common carriers.**

(a)

Every person who is assessable with a license tax under this article or who is a common carrier of coal, oil, or gas shall keep sufficient records, including, but not limited to, records showing the source and quantity of, and gross receipts on payments for, the coal, oil, and gases which they have produced or transported, or for which they have received some economic benefit, to enable the Commissioner of Revenue to verify the correctness of the tax paid for the license months or years assessable and to enable the Commissioner of Revenue to ascertain what is the correct amount of tax that was assessable for each of those months or years. All such records, books of accounts, and other information shall be open to inspection and examination by the Commissioner of Revenue in order to allow the Commissioner of Revenue to establish whether a particular receipt is directly attributable to the taxable privilege exercised within the County. The Commissioner of Revenue shall provide such persons with the option to conduct the audit in such person's local business office within the County, if the records are maintained there. In the event the records are maintained outside the County, copies of the appropriate books and records shall be sent to the Commissioner's office upon demand.

(b)

Any common carrier involved in the transportation of coal, oil, or gas within or from the County shall submit, upon request, to the Commissioner of Revenue records showing the source and quantity of, and, if purchased, the price paid for, all coal, oil, or gases which the common carrier acquired or transported during the preceding month. This information may be made available to any other political subdivision in which the coal, oil, or gas may have been severed.

(Ord. No. 2-1982, §§ IV, VII, 6-24-82; Ord. No. 1-1987, 1-8-87)

State law reference— Authority to require above records, Code of Virginia, § 58.1-3712.

**Sec. 19-46. - Distribution of taxes collected.**

The taxes collected pursuant to this article shall be paid and distributed as provided by law. Any taxes not distributed according to specific provisions of law shall be paid into the general fund of the County. The taxes collected pursuant to subsections (b) and (c) of Sec. 19-37 shall be distributed as follows:

(a)

One-fourth of the 1% collected pursuant to subsection (b) of Sec. 19-37 shall be paid to the Virginia Coalfield Economic Development Fund.

(b)

Three-fourths of the 1% collected pursuant to subsection (b) of Sec. 19-37 shall be paid to the County's Coal and Gas Road Improvement Fund and used for the purposes set forth in Virginia Code § 58.1-3713; however, one-fourth of such three-fourths may be used to fund the

construction of new water and/or sewer systems and lines in areas with natural water supplies which are insufficient from the standpoint of quality or quantity.

(c)

The County Treasurer shall distribute, in total, to the Treasurers of the incorporated towns within the County and the City of Norton twenty percent of the revenue collected pursuant to subsection (b) of Sec. 19-37 for the Coal and Gas Road Improvement Fund, as required by section 58.1-3713.1 of the Code of Virginia. These payments shall be made quarterly in accordance with a formula computed as follows: Twenty-five percent shall be divided among the incorporated towns and the City of Norton based on the number of registered motor vehicles in each town and the City of Norton and seventy-five percent shall be divided equally among the incorporated towns and the City of Norton.

(d)

After distribution in accordance with subsections (b) and (c) above, the remaining Coal and Gas Road Improvement funds shall be spent for such improvements to public roads as the Coal and Gas Road Improvement Advisory Committee and the Board of Supervisors may determine.

(e)

One-half of the 1% collected pursuant to subsection (c) of Sec. 19-37 shall be paid to the Virginia Coalfield Economic Development Fund. The remaining revenue collected pursuant to subsection (c) of Sec. 19-37 shall be paid into the general fund of the County.

(Ord. No. 2-1982, §§ XV, XVI, 6-24-82; Ord. No. 1-1987, 1-8-87; Ord. No. 2-1990, 6-15-90)  
State law reference—Similar provisions, Code of Virginia, §§ 58.1-3713 and 58.1-3713.4.

#### **Sec. 19-47. - Coal and Gas Road Improvement Advisory Committee generally.**

Pursuant to Virginia Code § 58.1-3713, there is hereby established a Coal and Gas Road Improvement Advisory Committee to be composed of four (4) members as follows: A member of the Board of Supervisors of the County appointed by the Board of Supervisors; transportation representative of the Virginia Department of Transportation; and two (2) citizen of the County connected with the coal and gas industries and to be appointed for a term of four years by the chief judge of the circuit court.

(Ord. No. 2-1982, § XVII, 6-24-82; Ord. No. 1-1987, 1-8-87)

State law reference— Similar provisions, Code of Virginia, § 58.1-3713 (B).

#### **Sec. 19-48. - Coal and gas road improvement plans.**

Pursuant to Virginia Code § 58.1-3713, the Coal and Gas Road Improvement Advisory Committee shall develop, on or before July first of each year, a plan for improvement of roads during the following fiscal year. Such plan must have the approval of three members of the committee and shall be submitted to the Board of Supervisors of the County for approval. The

Board of Supervisors may approve or disapprove such plan, but may make no changes without the approval of three members of the committee.

(Ord. No. 2-1982, § XVIII, 6-24-82; Ord. No. 1-1987, 1-8-87)

State law reference— Similar provisions, Code of Virginia, § 58.1-3713.

**Sec. 19-49. - Use of County funds for coal and gas road improvements in towns or city.**

The Board of Supervisors may, in its discretion, and when permitted by applicable state law, elect to improve city and town roads with its funds, if consent of the city or town council is obtained.

(Ord. No. 2-1982, § XIX, 6-24-82; Ord. No. 1-1987, 1-8-87)

**Sec. 19-50. - Violations and penalties.**

(a)

The following persons shall be guilty of a Class 1 misdemeanor:

(1)

Any person who conducts a mining operation in this County without obtaining a license or after a license has been suspended or revoked.

(2)

Each officer or director of a corporation that conducts a mining operation in this County without obtaining a license or after a license has been suspended or revoked.

(3)

Each shareholder of a closely-held corporation that conducts a mining operation in this County without obtaining a license or after a license has been suspended or revoked.

(4)

Any person who violates any provision of this article.

Each day of violation shall be a separate offense. No person shall be convicted under the provisions of subsections (a)(2) and (a)(3) of this section who shall have objected to the conduct of the mining operation in writing to the president or secretary of such corporation and forwarded a copy of this objection to the Commissioner of Revenue.

(b)

It shall be unlawful for any person:

(1)

To fail to keep the records required by this article or to make such records available as herein required; or

(2)

Willfully to fail to pay, collect, or truthfully account for and pay any license tax herein imposed;  
or

(3)

Willfully to attempt in any manner to evade or defeat any such license tax or the payment thereof.

Each day of violation shall be a separate offense.

(c)

Violations under this section shall be Class I misdemeanors, and shall be punishable by a fine not to exceed \$2,500.00 for each day of violation and confinement in the County jail for not more than twelve (12) months, either or both in the discretion of the court or jury trying the case. Conviction of a second offense under this section shall, in addition to a fine not to exceed \$2,500.00, require confinement in the County jail for not less than ten (10) days nor more than twelve (12) months.

(d)

Any penalty imposed for violation of this section shall be in addition to the civil remedies or penalties provided for by law.

(Ord. No. 2-1982, § XIV, 6-24-82; Ord. No. 1-1987, 1-8-87)

**Sec. 19-51. – Limitations and extensions of assessments and collections of tax.**

(a)

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

(b)

Notwithstanding Virginia Code § 58.1-3903, the Commissioner of Revenue shall assess the license tax omitted because of fraud or failure to apply for a license for the current license tax year and the six preceding license tax years.

(c)

The period for collecting any local license tax shall not expire prior to the period specified in Virginia Code § 58.1-3940, two years after the date of assessment if the period for assessment has been extended pursuant to this section, two years after the final determination of an appeal for which collection has been stayed pursuant to subsections (b) or (d) of Sec. 19-52, or two years after the final decision in a court application pursuant to Virginia Code § 58.1-3984 or a

similar law for which collection has been stayed, whichever is later.

### **Sec. 19-52. – Administrative appeals to the Commissioner of Revenue.**

(a)

Definitions for purposes of this section:

*“Amount in dispute”*, when used with respect to taxes due or assessed, means the amount specifically identified in the administrative appeal or application for judicial review as disputed by the party filing such appeal or application.

*“Appealable event”* means an increase in the assessment of a license tax payable by a taxpayer, the denial of a refund, or the assessment of a license tax where none previously was assessed, arising out of the Commissioner of Revenue’s (i) examination of records, financial statements, books of account, or other information for the purpose of determining the correctness of an assessment; (ii) determination regarding the rate or classification applicable to the licensable business; (iii) assessment of a license tax when no return has been filed by the taxpayer; or (iv) denial of an application for correction of erroneous assessment attendant to the filing of an amended application for license.

*“Fivolous”* means a finding, based on specific facts, that the party asserting the appeal is unlikely to prevail upon the merits because the appeal is (i) not well grounded in fact; (ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (iii) interposed for an improper purpose, such as to harass, to cause unnecessary delay in the payment of tax or a refund, or to create needless cost from the litigation; or (iv) otherwise frivolous.

*“Jeopardized by delay”* means a finding, based upon specific facts, that a taxpayer designs to (i) depart quickly from the County; (ii) remove his property from the County; (iii) conceal himself or his property in the County; or (iv) do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

(b)

*Filing and contents of administrative appeal.* Any person assessed with a license tax as a result of an appealable event as defined in this section may file an administrative appeal of the assessment within one year from 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, with the Commissioner of the Revenue. The appeal must be filed in good faith and sufficiently identify the taxpayer, the tax periods covered by the challenged assessments, the amount in dispute, the remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer’s contention. The Commissioner of Revenue may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, an audit or further audit, or other evidence deemed necessary for a proper and equitable determination of the appeal. The assessment placed at issue in the appeal shall be deemed prima facie correct. The Commissioner of Revenue shall undertake a full review of the taxpayer’s claims and issue a written determination to the

taxpayer setting forth the facts and arguments in support of his decision.

(c)

*Notice of right of appeal and procedures.* Every assessment made by the Commissioner of Revenue pursuant to an appealable event shall include or be accompanied by a written explanation of the taxpayer's right to file an administrative appeal and the specific procedures to be followed in the County, the name and address to which the appeal should be directed, an explanation of the required content of the appeal, and the deadline for the filing of an appeal.

(d)

*Suspension of collection activity during appeal.* Provided a timely and complete administrative appeal is filed, collection activity with respect to the amount in dispute shall be suspended until a final determination is issued by the Commissioner of Revenue, unless the County Treasurer (i) determines that collection would be jeopardized by delay as defined in subsection A of this section; (ii) is advised by the Commissioner of Revenue that the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) is advised by the Commissioner of Revenue that the appeal is frivolous as defined in subsection A of this section. Interest shall accrue in accordance with the provisions of subsection (c) of Sec. 19-41, but no further penalty shall be imposed while the collection action is suspended.

(e)

*Procedure in event of nondecision.* Any taxpayer whose administrative appeal to the Commissioner of Revenue pursuant to the provisions of this section 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 Commissioner of Revenue, elect to treat the appeal as denied and appeal the assessment to the Tax Commissioner in accordance with the provisions of Sec. 19-53. The Tax Commissioner shall not consider an appeal filed pursuant to the provisions of this article if he finds that the absence of a final determination on the part of the Commissioner of Revenue was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the Commissioner of Revenue to make his determination.

### **Sec. 19-53. – Administrative appeal to the Tax Commissioner.**

(a)

Any person assessed with a local license tax as a result of a determination, upon an administrative appeal to the Commissioner of Revenue pursuant to Sec. 19-52, that is adverse to the position asserted by the taxpayer in such appeal may appeal such assessment to the Tax Commissioner within 90 days of the date of the determination by the Commissioner of Revenue. The appeal shall be in such form as the Tax Commissioner may prescribe and the taxpayer shall serve a copy of the appeal upon the Commissioner of Revenue. The Tax Commissioner shall permit the Commissioner of Revenue to participate in the proceedings, and shall issue a determination to the taxpayer within 90 days of receipt of the Taxpayer's application, unless the taxpayer and the Commissioner of Revenue are notified that a longer period will be required. The appeal shall proceed in the same manner as an application pursuant to Virginia Code § 58.1-1821, and the Tax Commissioner may issue an order correcting such assessment pursuant to Virginia Code § 58.1-1822.



(b)

*Suspension of collection activity during appeal.* On receipt of a notice of intent to file an appeal to the Tax Commissioner pursuant to the provisions of subsection (a) of this section, collection activity with respect to the amount in dispute shall be suspended until a final determination is issued by the Tax Commissioner, unless the County Treasurer (i) determines that collection would be jeopardized by delay as defined in subsection (a) of Sec. 19-52; (ii) is advised by the Commissioner of Revenue, or the Tax Commissioner, that the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) is advised by the Commissioner of Revenue that the appeal is frivolous as defined in subsection (a) of Sec. 19-52. Interest shall accrue in accordance with the provisions of subsection (c) of Sec. 19-41, but no further penalty shall be imposed while collection action is suspended. The requirement that collection activity be suspended shall cease unless an appeal pursuant to the provisions of subsection (a) of this section is filed and served on the necessary parties within 30 days of the service of notice of intent to file such appeal.

(c)

*Implementation of determination of Tax Commissioner.* Promptly upon receipt of the final determination of the Tax Commissioner with respect to an appeal pursuant to the provisions of subsection (a) of this section, the Commissioner of Revenue shall take those steps necessary to calculate the amount of tax owed by or refund due to the taxpayer consistent with the Tax Commissioner's determination and shall provide that information to the taxpayer and to the County Treasurer in accordance with the provisions of this article.

(1) If the determination of the Tax Commissioner sets forth a specific amount of tax due, the Commissioner of Revenue shall certify the amount to the County Treasurer and the County Treasurer shall issue a bill to the taxpayer for such amount due, together with interest accrued and penalty, if any is authorized by this article, within 30 days of the date of the determination of the Tax Commissioner.

(2) If the determination of the Tax Commissioner sets forth a specific amount of refund due, the Commissioner of Revenue shall certify the amount to the County Treasurer and the County Treasurer shall issue a payment to the taxpayer for such amount due together with interest accrued pursuant to this article, within 30 days of the date of the determination of the Tax Commissioner.

(3) If the determination of the Tax Commissioner does not forth a specific amount of tax due, or otherwise requires the Commissioner of Revenue to undertake a new or revised assessment that will result in an obligation to pay a tax that has not previously been paid in full, the Commissioner of Revenue shall promptly commence the steps necessary to undertake such new or revised assessment, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The Commissioner of Revenue shall certify the new assessment to the County Treasurer and the County Treasurer shall issue a bill to the taxpayer for the amount due, together with interest accrued and penalty, if any as authorized by this

article, within 30 days of the date of the new assessment.

(4) If the determination of the Tax Commissioner does not set forth a specific amount of refund due, or otherwise requires the Commissioner of Revenue to undertake a new or revised assessment that will result in an obligation on the part of the locality to make a refund of taxes previously paid, the Commissioner of Revenue shall promptly commence the steps necessary to undertake such new or revised assessment, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The Commissioner of Revenue shall certify the new assessment to the County Treasurer and the County Treasurer shall issue a refund to the taxpayer for the amount of tax due, together with interest accrued, within 30 days of the date of the new assessment.

**Sec. 19-54. – Judicial review of determination of the Tax Commissioner.**

(a)

*Judicial review.* Following the issuance of a final determination of the Tax Commissioner pursuant to subsection (a) of Sec. 19-53, the taxpayer or Commissioner of Revenue may apply to the Buchanan County Circuit Court for judicial review of the determination, or any part thereof, pursuant to Virginia Code § 58.1-3984. In any such proceeding for judicial review of a determination of the Tax Commissioner, the burden shall be on the party challenging the determination of the Tax Commissioner, or any part thereof, to show that the ruling of the Tax Commissioner is erroneous with respect to the part challenged. Neither the Tax Commissioner nor the Department of Taxation shall be made a party to an application to correct an assessment merely because the Tax Commissioner has ruled on it.

(b)

*Suspension of payment of disputed amount of tax due upon taxpayer's notice intent to initiate judicial review.*

(1) On receipt of a notice of intent to file an application for judicial review, pursuant to Virginia Code § 58.1-3984, of a determination of the Tax Commissioner pursuant to subsection (a) of Sec. 19-53 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 County Treasurer shall further suspend collection activity while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determined that (i) the taxpayer's application for judicial review is frivolous, as defined in subsection (a) of Sec. 19-52; (ii) collection would be jeopardized by delay, as defined in subsection (a) of Sec. 19-52; (iii) suspension of collection would cause substantial economic hardship to the County. For purposes of determining whether substantial economic hardship to the County would arise from a suspension of collection activity, the court shall consider the cumulative effect of then-pending appeals filed within the County by different taxpayers that allege common claims or theories of relief.

(2) Upon a determination that the appeal is frivolous, that collection may be jeopardized by delay, or that suspension of collection would result in substantial economic hardship to the County, the court may require the taxpayer to pay the amount in dispute or a portion thereof, or to provide surety for payment of the amount in dispute in a form acceptable to the court.

(3) No suspension of collection activity shall be required if the application for judicial review fails to identify with particularity the amount in dispute.

(4) The requirement that collection activity be suspended shall cease unless an application for judicial review pursuant to Virginia Code § 58.1-3984 is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.

(5) The suspension of collection activity authorized by this section shall not be applicable to any appeal of a license tax that is initiated by the direct filing of an action pursuant to Virginia Code § 58.1-3984 without prior exhaustion of the appeals provided by Sec. 19-52 and Sec. 19-53.

(c)

*Suspension of payment of disputed amount of refund due upon the County's notice of intent to initiate judicial review.*

(1) Payment of any refund determined to be due pursuant to the determination of the Tax Commissioner of an appeal pursuant to subsection (a) of Sec. 19-53 shall be suspended if the County serves upon the taxpayer, within 60 days of the date of the determination of the Tax Commissioner, a notice of intent to file an application for judicial review of the Tax Commissioner's determination pursuant to Virginia Code § 58.1-3984 and pays the amount of the refund not in dispute including tax and accrued interest. Payment of such refund shall remain suspended while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that the County's application for judicial review is frivolous, as defined in subsection (a) of Sec. 19-52.

(2) No suspension of refund activity shall be permitted if the County's application for judicial review fails to identify with particularity the amount in dispute.

(3) The suspension of the obligation to make a refund shall cease unless an application for judicial review pursuant to Virginia Code § 58.1-3984 is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.

(d)

*Accrual of interest on unpaid amount of tax.* Interest shall accrue in accordance with the provisions of subsection (c) of Sec. 19-41, but no further penalty shall be imposed while collection action is suspended.

#### **Sec. 19-55. – Rulings.**

Any taxpayer or authorized representative of a taxpayer may request a written ruling regarding the application of a license tax to a specific situation from the Commissioner of Revenue. Any person requesting such a ruling must provide all facts relevant to the situation placed at issue 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 shall invalidate any such ruling issues. A written ruling may be revoked or amended prospectively if (1) there is a change in the law, a court decision, or the guidelines issued by the Department of Taxation upon which the ruling was based or (2) the Commissioner of Revenue 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.

**Sec. 19-56. - Severability.**

In the event any provisions of this article or any part, section, subsection, sentence, or phrase thereof should be held unconstitutional or otherwise invalid on any ground, such provision, part, section, subsection, sentence or phrase shall be deemed severable and the remainder of this article shall remain in full force and effect.

(Ord. No. 1-1987, 1-8-87)

**Secs. 19-57—19-61. - Reserved.**