
CHAPTER 6: COMPLIANCE ISSUES.

§ 6.1. DUE DATES.

If not previously licensed, a person must apply for a license prior to beginning business. If licensed the previous year, a person must apply for a license prior to March 1st.¹⁷ 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.

For taxes based on gross receipts, 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.

§ 6.2. INTEREST AND PENALTIES.

The provisions of *Code of Virginia* § 58.1-3703.1 relating to interest and penalties apply to assessments made on and after January 1, 1997, even if for an earlier license year. Interest is charged on all late payments regardless of reason. 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. The ten percent penalty and interest for late payment apply to license fees as well as the license tax.

Uniform Ordinance provisions. *Code of Virginia* § 58.1-3700. If a license is required by law and a license tax is levied on the business, it is unlawful to operate the business without a license. See Black's Law Dictionary. A fee is a charge fixed by law for the use of a privilege under control of government. Clearly the license tax and fee, if imposed by the locality, fulfill the same purpose; they are required to conduct business. Since they are identical, all penalty provisions which apply to the failure to file and application to pay the tax apply to the failure to pay the fee.

§ 6.2.1. Interest.

For assessments made on or after January 1, 1997, if a payment of tax is late, interest will be charged on the late payment from the due date until the date paid without regard to fault or other reason. For tax years prior to January 1, 1997, localities may charge interest upon delinquent taxes pursuant to § 58.1-3916.

If an assessment of additional or omitted tax is found to be erroneous, the interest and penalty charged and collected on the amount of such assessment must be refunded with interest on the refund from the date of payment or the due date, whichever is later. Interest on

¹⁷ Every locality must adopt a March 1 due date for applications no later than the 2001 license year.

any refund must be paid at the same rate charged under § 58.1-3916.

Taxes paid by first-year taxpayers based upon estimates will be subject to correction with interest and penalties if estimates prove to be unreasonable. Unless otherwise provided by a locality, estimates of the tax due will be deemed unreasonable if they are less than 80% of the actual taxes ultimately due.

If a refund is made within than thirty days from the date of the payment that created the refund, or the due date of the tax, whichever is later, interest will not be paid.

If a late payment is made within than thirty days from the due date of the tax, whichever is later, interest on the payment will not be due.

§ 6.2.2. Penalties.

Upon a failure to file or a failure to pay a tax due, a penalty of ten (10%) percent may be imposed. If both the application and payment are late, only one penalty may be imposed, unless the local official determines the taxpayer has a history of non-compliance, then both penalties may be assessed. Where an assessment of additional tax is made, but the application and/or the return were made in good faith by the taxpayer and there is no fraud, recklessness or intentional disregard of the law on the part of the taxpayer, there will be no penalty on the additional tax.

A ten percent late penalty may be imposed on any assessed tax which is not paid within thirty (30) days. If the failure to file or pay is not the fault of the taxpayer, the penalty will not be imposed, or if imposed, shall be abated. Lack of fault must be demonstrated by the taxpayer showing that he acted responsibly and that the failure was due to events beyond his control. "Acted responsibly" means that the taxpayer exercised the reasonable care that a prudent person would exercise under the circumstances, and that the taxpayer took significant steps to avoid or mitigate the failure. Examples of such steps include 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, unavailability of records due to fire or other casualty; unavoidable absence (e.g., due to death or serious illness) of the person with 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.

§ 6.2.3. Waiver or abatement of late filing or late payment penalties.

If a taxpayer is penalized for failing either to file for a license or to pay the tax on the appropriate due date, the assessing official must waive or abate the penalty if the taxpayer was not at fault and the failure was due to events beyond the taxpayer's control. Interest, as opposed to a penalty, cannot be waived. To demonstrate lack of fault for waiver of penalty, a taxpayer must have exercised the same amount of care as a reasonably prudent person and

must have actively tried to avoid the failure. For example:

1. Taxpayer opened small dry-cleaning business in County A. County A has a population of 25,000. Taxpayer failed to apply for a license because taxpayer thought, in good faith, that his gross receipts would not exceed \$50,000. Taxpayer's gross receipts were \$100,000. Taxpayer would be liable for the license tax plus a penalty because taxpayer failed to file an application for a license.
2. A retailer fails to file an application on time when its computer system suffers significant damage due to floods. The retailer never informs tax assessor of its problem. Although the failure to file was initially not the fault of the retailer, retailer will be liable for the penalty since it failed to act reasonably in notifying the locality within a short period of time and did not attempt to correct the failure and to obtain an extension.
3. Same facts as #2 above, except that the retailer did not contact the tax assessor for ten months after its computer system is repaired and its store reopened. Although its failure to file was through no fault of its own, the retailer will be responsible for the penalty since it failed to rectify the failure within an amount of time which was reasonable under the circumstances indicated once the impediment was removed.
4. Local official erroneously sends old tax forms with outdated information to taxpayer. Taxpayer, who in good faith uses the old tax forms, underpays his tax. Since the underpayment was due to an event beyond the taxpayer's control and it was not reckless, fraudulent or the result of an intentional disregard of the law, there will be no penalty on the understatement.

§ 6.3. ASSESSMENTS: LIMITATIONS AND EXTENSIONS.

Code of Virginia § 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 § 58.1-3903, 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. The provision permitting an assessment of license tax for up to six preceding years in certain circumstances may not be construed to permit the assessment of tax for a license year beginning before January 1, 1997.¹⁸

However, where, before the expiration of time established for the assessment of any license tax, both the assessing official and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon.¹⁹ The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. The provisions of

¹⁸ *Code of Virginia* §§ 58.1-3703.1 A (4)(b) and 58.1-3703.1(B)(2).

¹⁹ The assessing officer and the taxpayer can agree to extend the period as assessing the original tax, assessing additional tax or omitted tax, or for revising an assessment as part of making a refund.

§ 58.1-3703.1(A)(4)(a) relating to agreements extending the period for assessing tax are effective for agreements entered into on and after July 1, 1996.

Assessments shall be deemed made by an assessing official when a written notice of assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be. An assessment includes a return filed on behalf of the taxpayer by the local assessing officer. An assessment does not include the imposition of a late filing or a late payment penalty except to the extent that the imposition of penalties is associated with or imposed as the result of an audit.

§ 6.4. LIMITATIONS ON COLLECTION.

Code of Virginia § 58.1-3940 provides that, in general, collection of local taxes may only be enforced for five years following December 31 of the year for which such taxes were assessed. In addition, *Code of Virginia* § 58.1-3703.1(a)(4)(c) provides that the period for collecting any local license tax will not expire prior to the period specified in § 58.1-3940, two years after the date of assessment if the period for assessment has been extended pursuant to § 58.1-3703.1(A)(4)(c), two years after the final determination of an appeal for which collection has been stayed pursuant to § 58.1-3703.1(A)(5)(b) or (d), or two years after the final decision in a court application pursuant to § 58.1-3984 or similar law for which collection has been stayed, whichever is later.

§ 6.5. 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 what is the correct amount of tax that was assessable for each of those years. 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.

A taxpayer must keep its records for the current license year and the preceding three (3) license years where it regularly files BPOL tax returns; however, a locality may review a taxpayer's records for the current license year and the six (6) preceding license years when there has been a failure on the part of the taxpayer to file BPOL tax returns or obtain a BPOL license, or where there has been fraud on the taxpayer's part relating to BPOL taxes. For each license year under audit or for which the taxpayer must keep records, base year records

provide the measure for license tax on gross receipts. See *Code of Virginia* §§ 58.1-3703.1(A)(4)(b) and 58.1-3703.1(B)(2). For example:

- A. Company A regularly pays BPOL taxes and is audited in 1997 for license years 1994, 1995 and 1996 by the locality in which it operates. In order for a full review covering all relevant tax years to take place, Company A must have its records for the current year and for license years 1994 through 1996.
- B. Same facts as above, except Company A has not applied for a BPOL license nor filed BPOL tax returns since 1989. *Code of Virginia* § 58.1-3703.1(A)(4)(b) allows a locality to assess the BPOL tax for the current license year and the previous six license years where there is fraud or the taxpayer fails to apply for a BPOL license. However, in cases of fraud or a failure to apply for a BPOL license, § 58.1-3703.1(B)(2), limits the application of § 58.1-3703.1(A)(4)(b) to BPOL assessments for license years beginning on and after January 1, 1997. The ability to assess a BPOL tax for the current license year and the previous six license years under § 58.1-3703.1(A)(4)(b) is in addition to the statutory authority to assess a BPOL tax for three preceding years under § 58.1-3903. Therefore, under § 58.1-3903, Company A can be assessed a license tax for 1997, 1996, 1995, and 1994.

§ 6.6. CONSISTENT REPORTING AND COORDINATED ENFORCEMENT.

The local official administering the license tax may consult with federal, state and local government officials to verify that any relevant certifications, determinations or classifications made by such other government official or the taxpayer for other tax or regulatory purposes are consistent with the classification claimed by the taxpayer for local license tax purposes or to coordinate enforcement of various tax and regulatory provisions. No presumption will be established by the action or inaction of another government official unless the applicable law, regulation, or policy administered by the other government official is substantially similar to the definition, law, ordinance or other provision applicable for BPOL purposes. Certifications, determinations, or classifications made by a government official or the taxpayer for other tax or regulatory purposes are evidence of the correctness of a classification of a taxpayer, but are not conclusive evidence. For example:

- A. The local tax official may consult with federal and state tax officials concerning whether a person who claims not to be engaged in business for local license tax purposes properly filed a Schedule C with his federal and state income tax returns.
- B. The local tax official may verify whether federal forms W-2, 1099 or similar forms have been filed with respect to persons or income for which classification as an employee or independent contractor is an issue.
- C. The local tax official may verify whether a person has obtained or is required to obtain a state or local regulatory license such as a contractor's license, professional license, zoning approval, building permit, etc. The existence or absence of such other regulatory action generally will not establish a presumption with respect to BPOL tax issues

because different definitions, purposes, and policies are involved.

1994 Op. Va. Att'y Gen. 114. (A contractor license for regulatory purpose is different than for BPOL.)

1993 Op. Va. Att'y Gen. 228. (A local commissioner refused to issue BPOL license because of zoning violation; nonetheless, BPOL tax owed when business conducted in violation of zoning.)

§ 6.7. LOCALITY TAX YEAR.

A locality which changes its license year from a fiscal year to a calendar year and adopts March 1 as the due date for license applications is not required to prorate any license tax to reflect a license year of less than twelve months, whether the tax is a flat amount or measured by gross receipts, provided that no change is made in the taxable year for measuring gross receipts. For example, Locality A has a license year which is based on a fiscal year and its license tax is based on gross receipts from the previous calendar year, with license taxes being payable on May 1 of each year following the calendar year in which gross receipts are recognized. However, when Locality A changes its license year from a fiscal year to a calendar year, license taxes are payable on March 1 of each year following the calendar year in which gross receipts are recognized. In this instance, Locality A is not required to prorate any license taxes.

Locality's Change of License Year

Years	1994	1995	1996	1997	1998	1999	2000
Old License Year (based on fiscal year)	May 1- Apr.30	May 1- Apr.30	May 1- Apr.30	N/A	N/A	N/A	N/A
New License Year (based on calendar year)	N/A	N/A	N/A	Jan.1- Dec. 31	Jan.1- Dec. 31	Jan.1- Dec. 31	Jan.1- Dec. 31
Base year	Jan. 1, 1993 to Dec. 31, 1993	Jan. 1, 1994 to Dec. 31, 1994	Jan. 1, 1995 to Dec. 31, 1995	Jan. 1, 1996 to Dec. 31, 1996	Jan. 1, 1997 to Dec. 31, 1997	Jan. 1, 1998 to Dec. 31, 1998	Jan. 1, 1999 to Dec. 31, 1999
License tax Due date	May 1, 1994	May 1, 1995	May 1, 1996	Mar. 1, 1997	Mar. 1, 1998	Mar. 1, 1999	Mar. 1, 2000

§ 6.8. TAXPAYER'S REQUEST FOR A WRITTEN RULING.

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 *Guidelines* 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.

CHAPTER 7: ADMINISTRATIVE APPEALS.

§ 7.1. INTRODUCTION

The 1996 amendments to the BPOL statutes created a review process designed to encourage resolution of local license tax issues through an appeals process which includes review by the local assessing officer and appeal to the Tax Commissioner. Through this process, a taxpayer who disagrees with an audit assessment may apply to the local assessing officer for review. If the taxpayer is dissatisfied with the results of the local review, the taxpayer may appeal the local decision to the Tax Commissioner who will make a determination of the issues raised by the taxpayer.

Additionally, the 1996 amendments provided taxpayers an opportunity for greater certainty in the administration of the BPOL tax through the use of written rulings. In this process, taxpayers may request a written ruling from their local assessing officer regarding the application of a local license tax to their unique circumstances. In most cases, the taxpayer may rely on the positions set forth in those rulings.

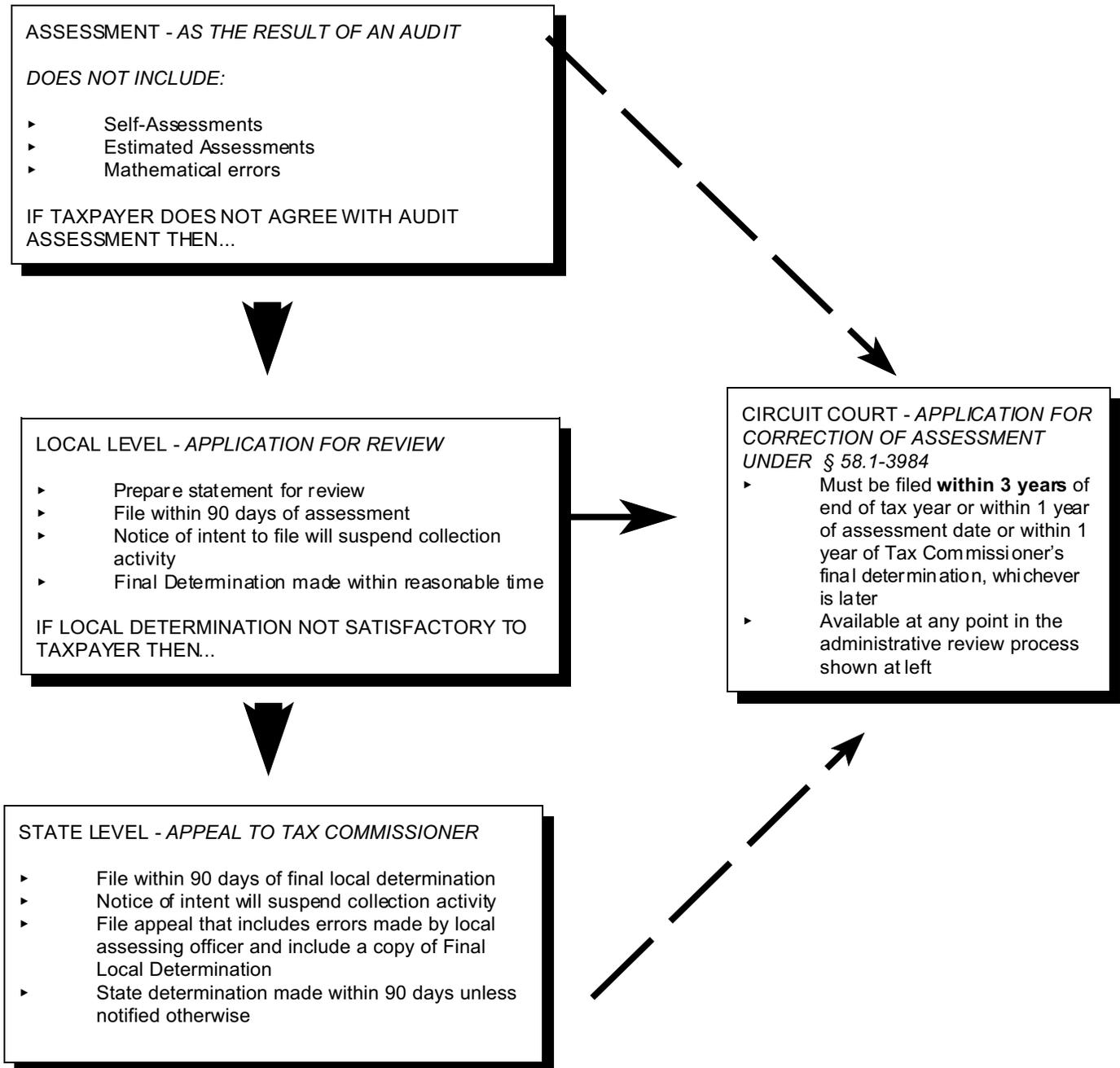
§ 7.2. ADMINISTRATIVE REVIEW PROCESS

Discussion and charts illustrating the appeals process as presented in the *Guidelines* appear below.

NOTE: The following charts present an overview of the administrative review process and are intended to give general guidance to the local assessing officer and taxpayers. Local assessing officers and taxpayers should read the accompanying Guidelines to obtain complete information.

BPOL APPEAL PROCESS

Taxpayers may seek correction of BPOL audit assessments through the administrative process shown on this page. Detailed step by step instructions for utilizing this process follow in these Guidelines.



ADMINISTRATIVE REVIEW OF BPOL AUDIT ASSESSMENTS

Taxpayer

	<u>Function</u>	<u>Effect</u>	<u>Interest</u>	<u>Collection Activity</u>
Within 90 days of the date of an audit assessment	Application for Review filed with the local assessing officer	Local assessing officer makes a final written determination	Accrues	Stops when a complete Application for Review or a Notice of Intent to Appeal is filed (1)
Within 90 days of the date of the local assessing officer's final written determination	Appeal to the Tax Commissioner (2)	Tax Commissioner will make a determination of the appeal	Accrues	Stops when an Appeal to the Tax Commissioner or a Notice of Intent to Appeal is filed (3)

- (1) Taxpayers intending to appeal an audit assessment should immediately provide a written Notice of Intent to Appeal to the local assessing officer to stop collection activity.
- (2) If the appeal is incomplete, taxpayer is given 30 days to complete it.
- (3) Taxpayers intending to appeal a local assessing officer's determination should immediately provide a written Notice of Intent to Appeal to the local assessing officer and to the Tax Commissioner to stop collection activity.

As the chart above indicates, the taxpayer must first file an Application for Review with the local assessing officer before an appeal of an audit assessment can be made to the Tax Commissioner. The taxpayer has 90 days from the date of the audit assessment to file the Application for Review. 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 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.

ADMINISTRATIVE REVIEW OF BPOL AUDIT ASSESSMENTS

Local assessing officer

<u>Critical Date</u>	<u>Function</u>	<u>Effect</u>	<u>Interest</u>	<u>Collection Activity</u>
Within a reasonable time of receipt of taxpayer's Application for Review	Make a final written determination	Taxpayer has 90 days from date of final written determination to file an Appeal to the Tax Commissioner	Accrues	May begin or resume after final written determination is made
Within 30 days of notice that appeal has been made to the Tax Commissioner	Make a request to address new issues or make a written reply to taxpayer's appeal (1)	Allows local assessing officer to respond to new issues or to the appeal, in general	Accrues	Stops until Tax Commissioner issues a final written determination

- (1) If a request to address new issues is made, the appeal will return to the local assessing officer and the local appeals process re-starts. The local assessing officer must make a new final determination which can be appealed to the Tax Commissioner.

As the chart above indicates, 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. After issuing a final written determination, the local assessing officer may commence or resume collection activity on a license tax assessment. Such 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 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. Once an appeal is returned to the local assessing officer, the local assessing officer must issue a new final written determination which can be appealed to the Tax Commissioner.

§ 7.3. APPLICABILITY OF GUIDELINES.

The following sections cover the administrative review of audit assessments by the local assessing officer and the Tax Commissioner. These *Guidelines* apply to local license taxes only. The administrative review process is effective for assessments of local license tax made on and after January 1, 1997, even if for an earlier license year. The existence, utilization, or attempt to utilize the administrative review process provided in these *Guidelines* does not affect the taxpayer's right to pursue any other administrative and judicial remedies authorized by law. The filing of an action in circuit court does not prohibit an administrative review under § 58.1-3700 *et seq.*

§ 7.4. DEFINITIONS.

Unless otherwise required by the context, the following words and terms have the following meanings:

“Appeal to the Tax Commissioner” means a taxpayer's application, filed with the Tax Commissioner pursuant to *Code of Virginia* § 58.1-3703.1 (A)(5)(c). The appeal should contain the following:

- A. Complete Application for Review (detailed below) as submitted to the local assessing officer.
- B. Local assessing officer's Final Local Determination.
- C. A statement explaining why the taxpayer believes the local assessing officer is in error.

The statement should include analysis of how the local assessing officer misinterpreted or misapplied facts or authority and also include facts, issues and authority which the taxpayer believes the local assessing officer failed to take into consideration.

“Application for Review” means a taxpayer's written request filed with a local assessing officer for review of an audit assessment made pursuant to *Code of Virginia* § 58.1-3703.1(A)(5)(a). The application should contain the following:

- A. Name and address of taxpayer and taxpayer identification number.
- B. If applicant is different from the taxpayer, name and address of the applicant and a power of attorney or letter of representation.
- C. Copy of Notice of Assessment.

D. A statement explaining why the taxpayer believes the assessment is erroneous. The statement should also include facts, issues and authority which the taxpayer believes supports his position.

E. Statement of relief the taxpayer requests.

“Assessment” means the definition of that term as it appears in Chapter 1. Definitions., of these *Guidelines*.

“Audit” means an examination of records, financial statements, books of accounts, and other information to evaluate the correctness of a local license tax. An audit shall include, but is not limited to, an examination to determine the correctness of a classification of a licensable business, examinations resulting in adjustments made to gross receipts, tax, and other information contained in the taxpayer’s return, and examinations resulting in the imposition of a local license tax when no return has been filed.

An audit assessment is not: a statutory assessment, a self-assessment, or an assessment resulting from the correction of mathematical errors. However, if an examination of records or other information takes place in conjunction with the above, the assessment may be appealable as an audit assessment.

“Collection activity” means the assessor’s use of any means, direct or indirect, to obtain payment of an assessment.

“Date of the assessment” means the date when a written notice of assessment is delivered to the taxpayer by the assessing officer or an employee of the assessing officer, or mailed to the taxpayer at the taxpayer’s last known address.

“Filed.” A document is “filed” as of the date it is postmarked for first class delivery via United States mail or when it is received if any other method of delivery, including facsimile transmissions, is utilized.

“Final Local Determination” means a writing setting out the local assessing officer’s final determination on a taxpayer’s Application for Review, including facts and legal authority in support of the local assessing officer’s position on each issue raised by the taxpayer. See § 7.10. for a sample Final Local Determination.

“Jeopardized by delay” includes a finding that the application is frivolous or that a taxpayer desires to (i) depart quickly from the locality, (ii) remove his property therefrom, (iii) conceal himself or his property therein, 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.

“Local assessing officer” means the Commissioner of Revenue, or chief assessing

officer or the chief assessing officer's designee.

“Notice of intent to appeal” means the taxpayer's written statement filed with the local assessing officer that informs the local assessing officer of the taxpayer's intent to file an Application for Review. It also means the taxpayer's written statement filed with the local assessing officer and the Tax Commissioner informing of the taxpayer's intent to file an appeal to the Tax Commissioner.

“Tax Commissioner” means the chief executive officer of the Department of Taxation or his delegate, authorized pursuant to § 58.1-3703.1(A)(5)(c) to issue a final determination on an appeal.

“Taxpayer” means a person, corporation, partnership, unincorporated association, or other business or representative thereof subject to a local license tax.

§ 7.5. CALCULATION OF DAYS IN FILING REQUIREMENTS.

For any limitation of time in making an Appeal to the Tax Commissioner, Application for Review, reply, or any other information or material mentioned in these Guidelines, should the last day of such limitation period fall on a Saturday, Sunday, or holiday observed by the Commonwealth of Virginia, the Appeal, Application, reply, or other information or material may be filed on the next business day. For any limitation of time appearing in these Guidelines, the limitation shall begin to run on the day next following the event which triggers the time limitation.

§ 7.6. SUSPENSION AND COMMENCEMENT/RESUMPTION OF COLLECTION ACTIVITY.

Collection activity is **suspended** upon:

- A. The local assessing officer's receipt of a timely and complete Application for Review.
- B. The local assessing officer's receipt of a Notice of Intent to Appeal.
- C. The local assessing officer's receipt of notice of the filing of an Appeal to the Tax Commissioner.

The local assessing officer must notify the treasurer or other collection official when collection activity must be suspended.

Collection activity may **commence or resume** upon:

- The local assessing officer's determination that an assessment subject to an Application for Review or an Appeal to the Tax Commissioner is jeopardized by delay.
- The local assessing officer's issuance of a Final Local Determination.
- The local assessing officer's receipt of written notice from the Tax Commissioner that the taxpayer has failed to file a timely Appeal to the Tax Commissioner after the taxpayer has initially filed a Notice of Intent to Appeal.
- The local assessing officer's receipt of a final written determination issued by the Tax Commissioner in cases where the local license tax has not been totally abated.
- The local assessing officer's receipt of a copy of a taxpayer's request to withdraw an Appeal to the Tax Commissioner.

§ 7.7. INTEREST DURING APPEAL.

Assessments subject to an Application for Review or Appeal to the Tax Commissioner will continue to accumulate interest until paid or abated. Taxpayers are encouraged to pay the undisputed portion of any assessment to avoid accrual of interest on that undisputed portion while an Application for Review or Appeal to the Tax Commissioner is pending. Any such payment will not be deemed a waiver of the taxpayer's remedies described in these *Guidelines*.

§ 7.8. APPLICATION FOR REVIEW - LOCAL ASSESSING OFFICER.

§ 7.8.1. Time limitations.

A taxpayer assessed with a local license tax as the result of an audit may file an Application for Review with the assessing officer of a locality within ninety days of the date of the assessment.

§ 7.8.2. Good faith applications for review; frivolous applications for review; acknowledgment of filing of application for review.

The Application for Review must be filed in good faith. The Application for Review must not be frivolous or otherwise filed for purposes of avoiding or delaying collection of the local license tax. Upon receipt of the complete Application for Review, the local assessing officer shall acknowledge in a writing to the taxpayer, receipt of the Application for Review.

§ 7.8.3. Final local determination.

Provided the application is filed in good faith and not merely for purposes of delay, the local assessing officer shall conduct a full review of the facts, assertions, and authorities submitted by the taxpayer. During this process the local assessing officer may hold conferences with the taxpayer, conduct further inquiries, or perform additional audits as required to reach a fair conclusion on the issues presented by the taxpayer. Within a reasonable time of receipt of the Application for Review, the local assessing officer shall issue a signed and dated Final Local Determination. Each final written determination shall contain the following notice:

You may appeal this Final Local Determination to the Tax Commissioner as follows:

- If you wish to appeal, you must act within 90 days from the date of this Final Local Determination by filing an Appeal to the Tax Commissioner at P.O. Box 1880, Richmond, Virginia 23218-1880.
- Collection activity may commence or resume at any time after the date of this Final Local Determination and will not be suspended until a Notice of Intent to Appeal or Appeal to the Tax Commissioner is timely filed and the local assessing officer receives a copy. If you intend to appeal, you should immediately provide a written Notice of Intent to Appeal to the local assessing officer and to the Tax Commissioner so that collection activities are not reinstated or do not begin.
- BPOL *Guidelines* and the applicable Code of Virginia sections for preparing an Appeal to the Tax Commissioner are available at the office of the local assessing officer or at the Virginia Department of Taxation.

§ 7.9. APPEAL TO THE TAX COMMISSIONER.**§ 7.9.1. Time limitations.**

The taxpayer has ninety days from the date of the local assessing officer's Final Local Determination to file an Appeal to the Tax Commissioner. The address is:

Tax Commissioner
Post Office Box 1880
Richmond, Virginia 23218-1880

The Tax Commissioner may permit an extension of this period for good cause shown.

§ 7.9.2. Notice of intent to appeal filed but appeal to the Tax Commissioner not timely filed.

If a Notice of Intent has been filed with the Tax Commissioner, the Tax Commissioner shall give written notice to the local assessing officer and to the taxpayer of the taxpayer's failure to file an Appeal to the Tax Commissioner within the time provided for in these *Guidelines*.

§ 7.9.3. Incomplete appeals to the Tax Commissioner.

If the Tax Commissioner receives an appeal that is incomplete, the taxpayer will be given notice stating the information is incomplete. The local assessing officer will be provided a copy of this notice. The taxpayer will be allowed thirty days from the date of such notice to provide the information or ninety days from the date of the local assessing officer's Final Local Determination, whichever is longer.

Additional time to produce the missing items will be granted in compelling circumstances but only if the taxpayer makes such an extension request in writing within the time allowed under § 7.9.3.(A) herein. A copy of the request for additional time shall be mailed to the local assessing officer.

If the taxpayer fails to provide missing item(s) within the time allotted, the Tax Commissioner may proceed to decide the appeal based on available information making such inferences from the failure or refusal to provide requested information as may be appropriate under the circumstances. If sufficient information is unavailable to permit an adequate analysis, the appeal will be dismissed.

§ 7.9.4. Tax Commissioner receipt of a complete appeal.

The Tax Commissioner shall send a notice of receipt of an appeal to the local assessing officer and to the taxpayer.

§ 7.9.5. Local assessing officer's reply; New issues in taxpayer's appeal.

The local assessing officer has thirty days from the date of the notice of receipt of an appeal to:

1. File a written reply to the Tax Commissioner with additional information.
2. File a written request to address new issues raised by the taxpayer.

If a written request to address new issues is filed, the appeal shall return to the local assessing officer to address new issues. Whenever an appeal is returned to the local assessing officer because the local assessing officer has made a written request to address new issues, the local appeals process has started again. At this point, the local assessing officer must make a new determination which can then be appealed to the Tax Commissioner as described above.

The Tax Commissioner may request that the local assessing officer make a new Final Local Determination on any issues raised for the first time on appeal. The local assessing officer, however, is not required to make a new Final Local Determination but rather can provide relevant information to the Tax Commissioner who will then make a final written determination. If the local assessing officer issues a new Final Local Determination, that determination can then be appealed to the Tax Commissioner as described above.

§ 7.9.6. Tax Commissioner's final determination of the taxpayer's appeal.

In determining an appeal, the Tax Commissioner shall presume the local assessing officer's Final Local Determination is correct. The Tax Commissioner shall issue a written final determination on the taxpayer's appeal within ninety days of the last day a reply or a written request to address new issues can be made. The taxpayer and local assessing officer will be notified if a longer period is required.

The Tax Commissioner may make requests for relevant information during the appeal process. This request can include meetings and inspections of facilities. Should the taxpayer fail to respond, within a reasonable time, to a request for reasonably available information, the Tax Commissioner may make a written final determination stating that the local assessing officer's Final Local Determination is correct.

All written and oral information relevant to the determination of the taxpayer's appeal shall be provided by the Tax Commissioner to the taxpayer and local assessing officer within a reasonable time of receipt. All such communications and information shall be made a permanent part of the taxpayer's case file.

Written communications sent by the taxpayer or local assessing officer to the Tax Commissioner must also be mailed or delivered to the other party by the submitting party. Such communications shall include a signed and dated certificate that copies were provided, as required by these *Guidelines*, showing the date of mailing or delivery and the name and address of the addressee.

The taxpayer or local assessing officer may request a meeting to discuss the issues presented by the appeal.

The Tax Commissioner's final determination shall provide citations to sources of information which provide significant guidance, input, or serve as a basis for the final determination. The final determination may include an order correcting an assessment pursuant to § 58.1-1822.

§ 7.9.7. Withdrawal of appeal.

The taxpayer may withdraw his appeal to the Tax Commissioner by making such a request in writing any time prior to the issuance of the Tax Commissioner's final determination. A copy of the request to withdraw the appeal shall be mailed to the local assessing officer. Withdrawal of the appeal shall not preclude the Tax Commissioner from issuing for informational purposes an advisory opinion of issues presented by that appeal.

§ 7.9.8. Confidentiality - determinations and advisory opinions.

Tax Commissioner determinations and advisory opinions made available to the public shall eliminate any reference to the identities of the taxpayer and the local assessing officer.

§ 7.9.9. Appeal Exhibit.

FINAL LOCAL DETERMINATION

(DATE)

[Name]
[Organization]
[Address]
[City, State ZIP]

Re: 58.1-3703.1(A)(5)(a) Determination:
Business, Professional and Occupational License (BPOL) Tax
[Taxpayer's name]

Dear [Salutation]:

Enclosed please find a final assessment for the base year(s) <list base years>. After considering your Application for Review made on <date>, a final determination on your application has been reached. We have based our determination upon the following grounds and relevant facts:

Facts

You (or your client) have challenged:

[Specify the facts and issues presented in the Application for Review]

Determination

Based upon the facts we discovered during the audit and applicable local statutes, state statutes, and case law, we have determined:

[Final determination]

[Notification of taxpayer's rights]

You may appeal this Final Local Determination to the Tax Commissioner as follows:

- If you wish to appeal, you must act within 90 days from the date of this Final Local Determination by filing an Appeal to the Tax Commissioner at P.O. Box 1880, Richmond, Virginia 23218-1880.
- Collection activity may commence or resume at any time after the date of this Final Local Determination and will not be suspended until a Notice of Intent to Appeal or Appeal to the Tax Commissioner is timely filed and the local assessing officer receives a copy. If you intend to appeal, you should immediately provide a written Notice of Intent to Appeal to the local assessing officer and to the Tax Commissioner so that collection activities are not reinstated or do not begin.
- BPOL *Guidelines* and the applicable Code of Virginia sections for preparing an Appeal to the Tax Commissioner are available at the office of the local assessing officer and at the Virginia Department of Taxation.

Sincerely,

[name of local assessing officer]

[date]

§ 7.10. APPEAL TO THE CIRCUIT COURT.

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 § 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.

§ 7.11. THE TAX COMMISSIONER'S ADVISORY AND INTERPRETATIVE POWERS.

The Tax Commissioner has the authority to issue advisory written opinions which interpret the BPOL statutes and accompanying *Guidelines*. The Tax Commissioner is not required to interpret any local ordinances. Examples of the issues which the Commissioner may render advisory opinions upon include:

- Interpretation of changes made to the BPOL statutes.
- Questions, the answers of which depend upon both state law and the laws of a locality.
- Situations where two jurisdictions are attempting to tax the same gross receipts.
- Classifications of businesses under the BPOL enabling legislation.
- Whether a business qualifies as a manufacturer under existing court decisions.
- Whether a business qualifies for deductions, exclusions, or reduced rates of tax contained within the BPOL enabling legislation.
- Situs rules contained within the BPOL enabling legislation.
- Whether changes made to a local statute conform with required changes under recent Virginia law.

Suggested examples of advisory opinions which the Commissioner may decline to make include:

- Interpretations of wording contained within individual local BPOL ordinances.
- Interpretations of the validity of an individual locality's appeals process.

The form for use in the filing of a request for a written advisory opinion from the Tax Commissioner is set forth in Appendix G.

Source: Uniform Ordinance provisions The Tax Commissioner may refuse to issue an advisory opinion when the issue involves the interpretation of a local ordinance. However, the Commissioner must interpret the local ordinance if relevant to the appeal of an assessment.