APPENDIX A: AFFILIATED GROUPS

"Affiliated group" means:

A. One or more chains of corporations subject to inclusion connected through stock ownership with a common parent corporation which is a corporation subject to inclusion if:

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

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

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

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

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

When one or more of the corporations subject to inclusion, including the common parent corporation, is a non-stock corporation, the term "stock" as used in this subdivision shall refer to the non-stock corporation membership or membership voting rights, as is appropriate to the context.

An affiliated group is composed of two or more corporations or chains of corporations. Affiliated groups are one of two types, either parent-subsidiary or brother-sister. No locality shall impose a license fee or levy a license tax on gross receipts or purchases derived from transactions which occur between members of the affiliated group. Affiliated corporations are

not exempt from the license tax or fee from gross receipts or purchases conducted with nonaffiliated entities. Localities may also levy a wholesale license tax on an affiliated corporation for sales to nonaffiliated entities, even if the tax would be based on purchases from an affiliated corporation.[20] The filing of a consolidated income tax return is presumptive of an affiliated group, but not conclusive.

A. **Parent-Subsidiary Control Group** - A parent-subsidiary affiliated group consists of one or more chains of corporations in which a parent corporation directly owns at least 80% of the stock of at least one of the corporations subject to inclusion in the affiliated group, and at least 80% of the stock of any corporations subject to inclusion in the affiliated group, other than the parent corporation, are owned directly by one or more of the corporations subject to inclusion in the affiliated group.[21] For example:

- Corp. A owns 80% of Corp. B. Corp. B owns 80% of Corp. C.

Corp A ⇒ **80%** ⇒ **Corp. B**

⇓

80%

⇓

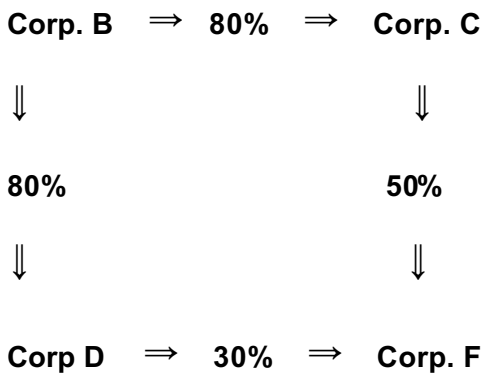
Corp. C

Corp. A is the common parent of a parent-subsidiary affiliated group of A, B and C corporations.

[20] Sales by the affiliated corporation to a nonaffiliated entity means sales by the affiliated corporation to the nonaffiliated entity where goods sold by the affiliated corporation or its agent are manufactured or stored in the Commonwealth prior to their delivery to the nonaffiliated entity.

[21] The percentages of stock throughout this appendix refer to the voting power of all classes of stock and each class of nonvoting stock subject to inclusion. Stock does not include nonvoting stock which is limited and preferred as to dividends in § 58.1-3700.1(1)(b).

- Corp. B owns 80% of Corp. C and 80% of Corp. D. Corp. C owns 50% of Corp. F. Corp. D owns 30% of Corp. F.



Corp. B is the common parent of the B, C, D, and F affiliated group.

B) **Brother-Sister Affiliated Group** - A brother-sister affiliated group exists if the following elements occur.

- Two or more corporations are owned by five or fewer persons (or estates or trusts); and
- A total membership test is met. Total ownership occurs when the shareholder group owns at least 80% of the total value of all stock or the total voting power of all classes of stock entitled to vote; and
- A common ownership test is met. Common ownership occurs when the shareholder group owns more than 50% of the total value of all stock or the total voting power of all classes of stock entitled to vote. The stock held by each person (estate or trust) is considered only to the extent that the stock ownership is identical for each corporation.

The best way to apply this test is to put the respective shareholders and corporations into charts:

Shareholders are listed down the first column and corporations are listed in the first row. Each shareholder's percentage of stock ownership is placed in the respective cell. The vertical columns are totaled to determine the 80% test. The horizontal columns are totaled into the identical ownership column and then the identical ownership column is totaled to determine the 50% test. Any owner who does not own at least some stock in each corporation is not considered in either the 50% test or the 80% test.

Example 1:

Individual shareholder A owns 30% of Corp. E, 40% of Corp. F, and 20% of Corp. G
Individual shareholder B owns 50% of Corp. E, 20% of Corp. F, and 30% of Corp. G
Individual shareholder C owns 10% of Corp. E, 20% of Corp. F, and 10% of Corp. G
Individual shareholder D owns 10% of Corp. E, 20% of Corp. F, and 30% of Corp. G

		Corporations		**Extent of Shareholder's Identical Ownership**
Shareholders	E Corp.	F Corp.	G Corp.	
A	30%	40%	20%	20%
B	50%	20%	30%	20%
C	10%	20%	10%	10%
D	10%	20%	30%	10%
Totals	100%	100%	90%	60%

The vertical columns are totaled to determine the 80% test. The horizontal columns are totaled to determine the 50% test. Since all three test are met, E, F & G are an affiliated group.

Example 2:

Same facts as above except that Shareholder A owns 40% of Corp. E, Shareholder B owns 10% of Corp. F, Shareholder C owns 30% of Corp. G and Shareholder D owns 0% of Corp. E and 0% of Corp. G.

		Corporations		**Extent of shareholder's Identical Ownership**
Shareholders	E Corp.	F Corp.	G Corp.	
A	40%	40%	20%	20%
B	50%	10%	30%	10%
C	10%	20%	30%	10%
D	0%	20%	0%	0%
Totals	100%	90%	80%	40%

Corporations E, F, and G are not an affiliated group because the 50% test is not met. Owner D is not considered in the calculation since D does not own stock in each corporation.

However, as shown in the following chart, Corporations E & F are an affiliated group in the example above:

		Corporations		**Extent of shareholder's Identical Ownership**
Shareholders	E Corp.	F Corp.	G Corp.	
A	40%	40%		40%
B	50%	10%		10%
C	10%	20%		10%
D	0%	20%		0%
Totals	100%	90%		60%

APPENDIX B: MANUFACTURING

Manufacturers are not listed as a classification for which § 58.1-3706 specifies the maximum tax rate. The taxation of wholesalers, however, is affected by whether the business is also classified as a manufacturer, and whether activities at a definite place of business from which sales are made are considered to be part of the manufacturing process. Questions also arise as to whether a business is a manufacturer or properly classified as another type of business.[22]

The *Code of Virginia* does not define the term "manufacturer" for purposes of the local business license tax.[23] The courts, however, have developed a liberally applied test involving three essential elements in determining when a person is a manufacturer:

1. The original material;
2. A process whereby the original material is changed; and
3. A resulting product which, by reason of being subjected to processing, is different from the original material.

"Manufacturer" means one engaged in activity which transforms materials into an article or product of substantially different character. A business engaged in manufacturing does not lose its status as a manufacturer merely because it conducts some non-manufacturing activities. When one is engaged in both manufacturing and non--manufacturing activities, it can still be classified as a manufacturer if its manufacturing activity constitutes a **substantial** portion of its overall activities. The test to determine whether a multi-purpose business qualifies as a manufacturer for tax purposes is one of substantiality. The test of substantiality has no rigid definition; however, the business as a whole must be considered. In order for the manufacturing component of a multipurpose business to be deemed substantial, it must not be *de minimis*, merely trivial, or only incidental to its principal business.

Gross receipts that are ancillary to a manufacturer's sales at wholesale at the place of manufacture are also exempt even though the receipts may be attributable to activities at another location, *e.g.*, interest on an installment sale or charge account may be received at a location other than the place of manufacture and sale at wholesale.

Thus, mere manipulation or rearrangement of the original materials is not sufficient; there must be a substantial, well-signified transformation in form, usability, quality and adaptability rendering the original material more valuable for use than it was before. Merely

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[22] For purposes of consolidation, some comments included in the *1997 BPOL Guidelines* have been omitted. However, the *1997 BPOL Guidelines* are the primary source of this version.

[23] Included in this Appendix are excerpts from the Virginia Supreme Court's discussion in the County of Chesterfield v. BBC Brown Boveri, 238 Va. 64 (1989) case of the term "manufacturer" as contained in the BPOL law.

processing, blending, grading etc. material is not manufacturing.

Not every person engaged in some manufacturing is classified as a manufacturer. The manufacturing component of the business must be a substantial (i.e, not incidental or inconsequential) portion of the business. The factors that may be considered in determining whether the manufacturing component of a multi-purpose business makes a substantial contribution to the entire business include, but are not limited to, any one or more of the following:

1. the manufacturing component's financial receipts or proportion of total corporate income;
2. the percentage that manufacturing equipment, inventory, etc. comprises of the total capital investment;
3. the number of employees working in the manufacturing component as compared with the total number of employees; or
4. the ratio of manufacturing activities to the entire business. For example, if a developer of very complex custom software produces only a few copies of disks, the assembly of purchased components may or may not constitute manufacturing. However, if such production constitutes a majority of the business' activities, the business may be considered a manufacturer.

Routine assembly generally is not manufacturing. For example, if components are sold separately and assembly is offered as an option to the purchaser, the assembly is a service (which may or may not be ancillary to the sale of the component, or de minimis.) When evaluating the facts and circumstances to determine if a business is engaged in manufacturing, factors which suggest that assembly is not a separate service but part of a manufacturing process include, but are not limited to, any one or more of the following:

- The assembly process is complex and uses numerous parts.
- After assembly, the components cannot be recognized without previous knowledge.
- The components are not readily usable for any purpose other than incorporation into the finished product.

Engineering, design, research and development, and computer software development typically are not manufacturing. However, the actual production of tangible products based on engineering, design, research and development can be manufacturing. For example:

- While the development of computer software is not manufacturing, the production of boxes containing the software on disks and related instruction manuals may be manufacturing.
- While the design of computer hardware components is not manufacturing, the production of such components may be manufacturing.

- While the design and engineering of specialized tools, dies, and machinery is not manufacturing, the production of even a single tool, die or machine may be manufacturing.

Cases and opinions germaine to manufacturing classification for BPOL tax

The term "original material" has been used instead of raw or new material because modern manufacturers may start with purchased components. In one case, a circuit court held that the assembly of purchased components into personal computers was manufacturing. County of Fairfax v. Datacomp Corp. (letter opinion dated February 22, 1995). See, also:

County of Chesterfield v. BBC Brown Boveri, 238 Va. 64 (1989). (Solite test for manufacturing is to be applied liberally; a multi-purpose business is classified as a manufacturer if manufacturing activity makes a substantial contribution to the entire business, i.e., not de minimis, trivial or incidental; factors suggested in evaluating substantiality.)

Solite Corp. v. King George County, 220 Va. 661 (1980). (The mere blending together of various ingredients, in the absence of a transformation into a product of substantially different character, is not manufacturing.)

Prentice v. City of Richmond, 197 Va. 724 (1956) (The original substance, though not destroyed, was so transformed through art and labor that without previous knowledge it could not have been recognized in the new shape it assumed, or in the new uses to which it was applied.)

1995 Op. Va. Att'y Gen. 257. (The pasteurization, homogenization, butterfat adjustment or vitamin fortification of milk, adding sugar and flavorings to milk is not manufacturing; but adding flavored powder or powdered tea and sugar to water is manufacturing; the addition of water to orange juice concentrate is not manufacturing.).

1995 Op. Va. Att'y Gen. 254. (Electroplating and electropainting processes are not manufacturing.)

1993 Op. Va. Att'y Gen. 231. (A seafood processor who transforms a product from one that is unusable by consumers into one that is usable and substantially different in character is a manufacturer.)

1991 Op. Va. Att'y Gen. 248. (A computer software development and hardware design, modification and installation is not manufacturing.)

1984-1985 Op. Va. Att'y Gen. 356. (A wholesale dealer in "cementitous" products not a manufacturer -- the dry ingredients were merely mixed and sold in bags and boxes.)

1984-1985 Op. Va. Att'y Gen. 399. (A person who grades and packs herbs, and sells scrap metal or parts from junk cars is a merchant; but if plants are dried, crushed, graded and packaged, or if scrap metal is crushed and compacted, it would be manufacturing.) However, the Circuit Court of Chesapeake recently held that crushing and shredding junk cars and separating the pieces into metallic categories free from debris was industrial processing, but not manufacturing under § 58.1-3703(C)(4). Money Point Land Holding Corp. t/a Jacobson Metals Co. v. City of Chesapeake, (letter opinion dated 2/14/95.)

1983-1984 Op. Va. Att'y Gen. 372 (definition in sales tax law not applicable to definition of "manufacturer" for license tax purposes.)

Appeal of Titzel Engineering, Inc., 205 A. 2d. 700 (Pa. 1964) (making an automobile would be manufacturing whether or not it was merely the assembling of parts manufactured by many other companies; a company using employees to assemble many parts to create a new, different and useful article would be thought of as a manufacturer and not an assembler.)

Manufacturing Examples:

1.) Example: An entity accepts delivery of used and burnt up turbine-powered generators which can no longer properly function. The entity removes parts from the generators and replaces them with new parts which it makes to precise specifications from raw copper. The entity also rewinds the generators with new copper wiring. After repair, the generators operate much like a new machine.
For the reasons stated above, the above activity constitutes manufacturing.

2.) Example: Entity purchases livestock outside of the state of Virginia, brings that stock into Virginia, and slaughters and trims the stock here, and also smokes and salts the meat for sale in Virginia.
Under these facts, this activity constitutes manufacturing.

3.) Example: An entity receives from various vendors electro-magnetic tape, some in raw form and some in programmed format, and integrates the data thereon with other magnetic tape received from other vendors which will result in a customized home video game cartridge or diskette.
Based upon these facts and for the reasons stated above, the above activity does not constitute manufacturing.

4.) Example: Same as above, except the entity designs small plastic, box-like cartridges and, after integrating the various original data types into combined data on a previously blank magnetic tape medium, it electronically engrafts the new, combined data onto magnetic plate-like tape diskettes inside of the cartridges and ships the resulting cartridges for wholesale from its production facility in Virginia.
For the reasons stated above, the activity as outlined in these set of facts constitutes manufacturing.

5.) Example: An entity engages in typesetting, duplicating, editing or graphic design processes. These activities by themselves are neither printing nor manufacturing. However, when an entity engages in more than one or a combination of these processes to produce a product that is substantially transformed from the original material, it may qualify as a manufacturer. If the entity sells the new product at wholesale from the place of manufacture, the business may benefit from the exemption contained within § 58.1-3703(C)(4). (See P.D. 99-200 for an example of this.)

APPENDIX C

LEGISLATIVE AND ADMINISTRATIVE HISTORY OF THE BPOL TAX

A brief history of the license tax is necessary to provide some context for recent changes in BPOL tax structure. In addition, an understanding of past legislative and administrative actions explains why so many policies and definitions refer back to laws that have been repealed.

For many years the state required a long list of specific businesses to obtain a license and pay a tax. The tax was usually a flat amount, but in some cases was graduated based on gross receipts. During this period, state law permitted cities and towns to impose their own license tax when anything for which a state license was required was done in the city or town. (However, many city charters contained broader general tax powers. *Telephone Company v. Newport News,* 196 Va. 627.) Beginning in 1948, license tax authority under state law was extended to counties and situs rules were added which brought in the concept of a "definite place of business." State law was amended in 1964 to eliminate the language restricting local licenses to instances in which a state license was required, permitting counties, and those cities and towns without general tax powers in their charters to impose a license tax regardless of whether the state taxed the particular business.

Although no locality was required to observe state license tax imposition and classifications after 1964, the local Commissioners of the Revenue issued both local and most state tax licenses. Where local ordinances and state law used the same terms or classifications, the local Commissioners would follow state classifications drafted for state license tax purposes.

State law provided for a number of exemptions for both state and local license tax purposes. For example, manufacturers were exempt from the tax on merchants if they were subject to the state tax on capital and sold to licensed dealers or retailers, but not to consumers. See § 188 of the *Tax Code* of 1928; see also *Thompson's Dairy. Inc. v County Bd.,* 197 Va. 623 (1956) applying a similar provision to dairies. Thus, a state and local license tax exemption depended on the Department's definition of a "manufacturer" for purposes of the capital tax.

In 1966 Virginia enacted the retail sales and use tax. The act also reduced the rate of the capital tax and repealed the code sections imposing a state license tax on retail and wholesale merchants. However, the enactment repealing the merchants license tax expressly provided that the repeal would not operate to subject a wholesale merchant to a state peddlers tax. In other words, even though the section defining a wholesale merchant had been repealed, the definition was still relevant for state license tax purposes and, by implication, for local license tax purposes as well. 1966 *Acts of Assembly* Chpt. 151, enactment 2. Therefore, almost 30 years after its repeal, the inclusion of sales to institutional, commercial and industrial users in § 58-304's definition of wholesale sales continues to be relevant in today's *BPOL*

Guidelines.

From 1964 until 1975 there was little statutory restraint on the authority of local governments to impose local license taxes at whatever rate they chose. The 1975 General Assembly froze local license tax rates as of December 31, 1974, and maintained the freeze until 1978. Following recommendations made by the Revenue Resources and Economic Commission, the General Assembly enacted the current four major categories and rate limitations now found in subsection A of § 58.1-3706. The relationship between the ceiling rates reflected the relative differences in operating ratios between broad categories of similar activities, i.e., the gross profit ratios for similar business activities as reported by the Internal Revenue Service in *Statistics of Income: Business Income Tax Returns. 1970.* The legislation also required the Department of Taxation to develop these *Guidelines.*

In 1978, the Department still administered a state license tax and the capital tax. As noted above, policies and definitions from the administration of both taxes affected local license tax administration. In 1982 the state license tax was repealed and in 1984 the rate on the capital tax was reduced to zero. The 1982 legislation repealed the code sections relating to state license taxes and amended sections relating to local license taxes to ensure that localities continued to enjoy the same authority with respect to local license tax as they had before the repeal of state license tax. Nevertheless, it is still necessary to look occasionally at pre-1982 state license tax law.

For example, employees who practice a profession may be required to obtain their own local license. Prior to the 1982 repeal, § 58-255 required a separate license for every member of a firm practicing a profession "regulated by the laws of this state" and other sections of the code required a state license of "every architect" or "every lawyer," etc.

In 1984, Title 58 was recodified as Title 58.1. The recodification rearranged and rewrote local license tax sections with little substantive change. Some of the changes eliminated references to repealed laws. The definition of "contractor" currently found in 58.1-3714 B was added, but derived from the definition for state license tax purposes in 58-297 prior to its repeal in 1982. It is interesting to note that § 58-297 included language classifying dealers in tombstones as merchants. This language was not incorporated into the recodification changes, but survives in § 5.5 of the current *Guidelines,* and appeared in § 4.6. of the 1995 version as well as in §1-5 of the 1984 version.

The 1978 session of the Virginia General Assembly enacted House Bill 696 amending §58-266.1 of the *Code of Virginia* (recodified in 1984 as § 58.1-3706), effective for the tax years beginning on and after January 1, 1979. The act imposed ceilings on the tax rates localities could impose on various classifications of businesses and also required that the Department of Taxation promulgate guidelines defining and explaining the categories of enterprises specified in the act. Previously, there were no BPOL *Guidelines.*

After seeking the counsel of local officials and interested groups and holding public

hearings, the original *Guidelines* were published and dated January 1, 1979. The Department of Taxation updated the *Guidelines* effective January 1, 1980 and again on July 1, 1984.

In 1994, the General Assembly amended § 58.1-3701 requiring the Department to update the *Guidelines* by July 1, 1995, and triennially thereafter. The Department circulated a draft of the updated *Guidelines* on May 15, 1995, and on June 12, 1995 held a hearing to receive comments. The *Guidelines* were issued on July 1, 1995.

In 1996, *Code of Virginia* § 58.1 -3700 et seq. were significantly amended. The intent of the 1996 amendments and the new *Guidelines* was to help ensure a more uniform administration of BPOL taxes. *Code of Virginia* § 58.1-3703.1 establishes uniform ordinance provisions. Localities levying a BPOL tax must include provisions in their local ordinances substantially similar to the uniform ordinance provisions. The uniform ordinance provisions include: due dates for BPOL license applications and license tax payments; penalty and interest provisions; waiver provisions for penalty and interest; taxpayer appeal procedures at the local and state level; rules for determining the situs and apportionment of gross receipts; and provisions allowing taxpayers to obtain advance rulings.

Amendments to *Code of Virginia* § 58.1-3701 also promote uniform administration. Under that section, the Tax Commissioner has the authority to issue written advisory opinions to interpret the provisions of Chapter 37 and the *Guidelines.* Advisory opinions are intended to supplement and be used in conjunction with law set out in Chapter 37.

The effective date of these changes was January 1, 1997, but selected provisions had other effective dates or were transitioned into the law. Although an update of the *Guidelines* was not required until 1998, the scope of the changes necessitated that the *Guidelines* be modified to reflect the 1996 amendments. Working groups comprised of local officials, members of the business community, interested individuals, and the Department of Taxation were formed to assist in redrafting the *Guidelines.* The Department circulated a draft of the updated *Guidelines* on November 18, 1996, reflecting input from the working groups. After a series of public hearings held in November and December 1996 to hear comments on the proposed draft, the *Guidelines* were issued on January 1, 1997.

The *Guidelines* and advisory opinions are not to be interpreted as granting localities the authority to impose any tax not otherwise authorized or that is prohibited by some other provision of law.

The *Guidelines* also do not require the locality to levy any tax, only that in doing so it not exceed statutory maximum rates. The final decision of whether or not to tax a business, profession or occupation allowed under § 58.13700 *et seq.* lies with each locality unless the tax is prohibited by some provision of law.

The locality may also impose a lower tax rate or provide for subclassifications within the categories listed in § 58.1-3706, provided the tax imposed does not exceed the

maximum tax rate specified in that section. In addition, the provisions required for administration of local license taxes must be adopted by the individual locality. Therefore, one must always look to the language of the local ordinance for the actual language imposing a tax, and creating subclassifications and exemptions.

The principal effect of the amendments was to provide a structure for uniform application of the tax. This structure starts from the premise that the tax is levied upon the privilege of conducting a licensable business. Localities may charge a fee for each license issued for the privilege of engaging in a licensable business. Additionally, to mitigate the tax burden on small and start-up companies, gross receipts thresholds were established for certain licensable privileges below which a locality cannot impose a BPOL tax. Further, a legislative amendment restricted localities from imposing a license fee and levying a license tax upon nonprofit organizations and venture capital funds.

After July 1, 2001, the *Guidelines* shall be subject to the Administrative Process Act and accorded the weight of a regulation under § 58.1-205. The *Guidelines* will be followed by the Department in deciding all appeals under *Code of Virginia* § 58.1-3703.1(A)(5)(c) and in issuing advisory written opinions pursuant to *Code of Virginia* § 58.1-3701. The Department reserves the right to modify the *Guidelines* to reflect changes in interpretations, judicial opinions, and the law. Any changes to the *Guidelines* will be made consistent with § 58.1-3700 et seq. which requires the Department to seek public comment.

APPENDIX D: MISCELLANEOUS ITEMS

CERTAIN LOCALITIES NOT SUBJECT TO RATE LIMITATIONS

Any locality which had, on January 1, 1978, a license tax rate for any of the categories listed in § 58.1-3706(A) which is higher than the maximum prescribed therein, may maintain a higher rate in such category, but no higher than the rate applicable on January 1, 1978, subject to the following conditions: (1) A locality may not increase a rate on any category which is at or above the maximum prescribed for such category in § 58.1-3706(A); (2) If a locality increases the rate on a category which is below the maximum, it shall apply all revenue generated by such increase to reduce the rate on a category or categories which are above such maximum; and, (3) A locality shall lower rates on categories which are above the maximums prescribed in § 58.1-3706(A) for any tax year after 1982 if it receives more revenue in tax year 1981, or any tax year thereafter, than the revenue base for such year. The revenue base for tax year 1981 shall be the amount of revenue received from all categories in tax year 1980, plus one-third of the amount, if any, by which such revenue received in tax year 1981 exceeds the revenue received for tax year 1980. The revenue base for each tax year after 1981 shall be the revenue base of the preceding tax year plus one-third of the increase in the revenues of the subsequent tax year over the revenue base of the preceding tax year. If in any tax year the amount of revenues received from all categories exceeds the revenue base for such year, the rates shall be adjusted as follows: The revenues of those categories with rates at or below the maximum shall be subtracted from the revenue base for such year. The resulting amount shall be allocated to the category or categories with rates above the maximum in a manner determined by the locality, and divided by the gross receipts of such category for the tax year. The resulting rate or rates shall be applicable to such category or categories for the second tax year following the year whose revenue was used to make the calculation.

NONPROFIT ORGANIZATIONS

Additionally, *Code of Virginia* § 58.1-3703(C)(18) provides certain exemptions to non-profit organizations. Nonprofit and charitable nonprofit organizations are defined separately as the kinds and sources of funds flowing to either nonprofit or charitable nonprofit organizations are different for purposes of the exemption from the BPOL tax.

"Nonprofit organization" means an organization, other than a "charitable nonprofit organization," which is exempt from federal income tax under IRC § 501. Activities conducted for consideration which are similar to activities that are conducted for consideration by for-profit businesses may be presumed to be activities that are subject to licensure. For example, a lunch counter operated by an organization open to members only, the proceeds from which are used to maintain the organization, may be subject to local license tax. In any case, gifts, contributions, and membership dues of nonprofit organizations would not be taxable gross receipts from the conduct of a business, nor could a locality impose a license fee on activities giving rise to such funds.

"Charitable nonprofit organization" means an organization which is described in IRC § 501(c)(3) and to which contributions are deductible by the contributor under IRC Code § 170, except that educational institutions are limited to schools, colleges and other similar institutions of learning. To the extent that a charitable nonprofit organization is required to report income which is in fact "unrelated business taxable income" for federal income tax purposes under IRC Code § 511 *et seq.*, such organization may be presumed to have gross receipts from an activity which, depending on the applicable classification, is licensable for BPOL purposes. The fact that a charitable nonprofit organization does not report any unrelated business taxable income for federal income tax purposes would not prevent the locality from requiring a license for the business activity; however, local officials may only determine whether a charitable nonprofit organization has unrelated taxable business income pursuant to IRC Code § 511 *et seq.*

1990 Op. Va. Att'y Gen. 217 (localities not precluded from taxing private nonprofit colleges on tuition or other consideration for services, but donations and other gratuitous transfers are not taxable gross receipts).

1989 Op. Va. Att'y Gen. 311 (nonprofit organization that regularly offers seminars taxable on receipts from seminar fees, but not donations).

Commonwealth v. Employees Assoc., 195 Va. 663 (1954) (locality may tax nonprofit employee association sales of food and beverage to members even though no profit intended or realized).

APPENDIX E: PUBLIC DOCUMENTS

Public Documents that have been issued by the department over the last several years are listed below by subject matter. They are available in your local commissioners office or you may contact the Office of Tax Policy at (804) 367-8010 to request copies of specific Public documents. Some documents may be listed more than once because they deal with multiple issues.

Attorney Fees

P.D. 94-227
P.D. 95-200
P.D. 97-063
P.D. 97-166
P.D. 97-310
P.D. 98-135
P.D. 99-111
P.D. 99-208

Affiliated Groups

P.D. 95-200
P.D. 97-101
P.D. 97-192
P.D. 97-421
P.D. 99-176

Business services

P.D. 97-2
P.D. 97-9
P.D. 97-16
P.D. 97-21
P.D. 97-26
P.D. 97-41
P.D. 97-44
P.D. 97-50
P.D. 97-52
P.D. 97-57
P.D. 97-63
P.D. 97-68
P.D. 97-69
P.D. 97-77
P.D. 97-87
P.D. 97-89
P.D. 97-115
P.D. 97-124
P.D. 97-133
P.D. 97-143
P.D. 97-145
P.D. 97-164
P.D. 97-165
P.D. 97-167
P.D. 97-174
P.D. 97-175
P.D. 97-183
P.D. 97-189
P.D. 97-192
P.D. 97-231
P.D. 97-251
P.D. 97-257
P.D. 97-277
P.D. 97-282
P.D. 97-284
P.D. 97-292
P.D. 97-294
P.D. 97-304
P.D. 97-309
P.D. 97-310
P.D. 97-318
P.D. 97-321
P.D. 97-323
P.D. 97-326
P.D. 97-330
P.D. 97-347
P.D. 97-396
P.D. 97-410
P.D. 97-421
P.D. 97-423
P.D. 97-427
P.D. 97-432
P.D. 97-490
P.D. 98-40
P.D. 98-50
P.D. 98-135
P.D. 98-140
P.D. 98-154
P.D. 98-156
P.D. 98-160
P.D. 98-203
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P.D. 99-10
P.D. 99-11
P.D. 99-12
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Contractors

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P.D. 97-57
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P.D. 97-164
P.D. 97-166
P.D. 97-172
P.D. 97-182
P.D. 97-183
P.D. 97-318
P.D. 97-323
P.D. 97-344
P.D. 97-396
P.D. 97-404
P.D. 97-423
P.D. 97-472
P.D. 98-160
P.D. 98-204
P.D. 99-12
P.D. 99-13
P.D. 99-122
P.D. 99-141
P.D. 99-207

Fiduciaries

P.D. 96-397
P.D. 97-128
P.D. 97-278
P.D. 97-292
P.D. 97-415
P.D. 97-485
P.D. 98-59

Fiduciaries

P.D. 98-109
P.D. 98-135

P.D. 98-136
P.D. 99-2

Financial Services

P.D. 94-227
P.D. 95-200
P.D. 97-2
P.D. 97-68
P.D. 97-168
P.D. 97-277
P.D. 97-292
P.D. 97-310
P.D. 97-321
P.D. 97-323
P.D. 97-490
P.D. 98-154
P.D. 99-100
P.D. 99-121
P.D. 99-211
P.D. 99-228
P.D. 99-233
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Internet Sales

P.D. 98-154
P.D. 99-137

Interstate Commerce

P.D. 95-200
P.D. 97-50
P.D. 97-142
P.D. 97-324
P.D. 98-140
P.D. 99-134
P.D. 99-212
P.D. 99-238

Itinerant Merchants & Peddlers

P.D. 97-68
P.D. 97-86
P.D. 97-133
P.D. 97-189

Limited Liability

P.D. 97-270
P.D. 98-37
P.D. 98-41
P.D. 98-42
P.D. 98-46
P.D. 98-50
P.D. 98-138
P.D. 98-156
P.D. 98-203
P.D. 99-9
P.D. 99-10
P.D. 99-134
P.D. 99-176
P.D. 99-209
P.D. 99-237

Manufacturers

P.D. 94-227
P.D. 95-200
P.D. 97-18
P.D. 97-146
P.D. 97-165
P.D. 97-183
P.D. 97-268
P.D. 97-312
P.D. 97-362
P.D. 97-427
P.D. 98-40
P.D. 98-154
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P.D. 99-14
P.D. 99-114
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P.D. 99-228
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Multiple Businesses

P.D. 95-200
P.D. 97-69
P.D. 97-88
P.D. 97-257
P.D. 97-304
P.D. 98-42
P.D. 98-138
P.D. 98-140
P.D. 98-154
P.D. 99-211
P.D. 99-233
P.D. 99-238
P.D. 99-264

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P.D. 97-157
P.D. 98-203

Proration or Apportionment

P.D. 95-200
P.D. 97-166
P.D. 97-284
P.D. 97-308
P.D. 97-309
P.D. 98-140
P.D. 99-10
P.D. 99-236

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P.D. 97-55
P.D. 97-56
P.D. 97-57
P.D. 97-68
P.D. 97-69
P.D. 97-88
P.D. 97-89
P.D. 97-115
P.D. 97-138
P.D. 97-146
P.D. 97-164
P.D. 97-175
P.D. 97-179
P.D. 97-183
P.D. 97-217
P.D. 97-249
P.D. 97-304
P.D. 97-305
P.D. 97-309
P.D. 97-317
P.D. 97-326
P.D. 97-362
P.D. 98-41
P.D. 98-42
P.D. 98-140
P.D. 98-154
P.D. 98-160
P.D. 99-9
P.D. 99-10
P.D. 99-12
P.D. 99-14
P.D. 99-23
P.D. 99-114
P.D. 99-121
P.D. 99-125
P.D. 99-133
P.D. 99-137
P.D. 99-141
P.D. 99-199
P.D. 99-200
P.D. 99-239

Real Estate Brokers

P.D. 94-227
P.D. 97-8
P.D. 97-282
P.D. 97-323
P.D. 97-404
P.D. 98-46

P.D. 99-100
P.D. 99-133

Severance Taxes

P.D. 95-200
P.D. 97-86
P.D. 97-101

Taxes and Fees

P.D. 99-111
P.D. 99-114
P.D. 99-210
P.D. 99-229
P.D. 99-232
P.D. 99-233
P.D. 99-234
P.D. 99-252
P.D. 99-256
P.D. 99-257
P.D. 99-258
P.D. 99-259
P.D. 99-270
P.D. 99-275

Wholesalers

P.D. 97-2
P.D. 97-23
P.D. 97-56
P.D. 97-57
P.D. 97-88
P.D. 97-124
P.D. 97-146
P.D. 97-164
P.D. 97-165
P.D. 97-168
P.D. 97-179
P.D. 97-183
P.D. 97-200
P.D. 97-249
P.D. 97-268
P.D. 97-277
P.D. 97-309
P.D. 97-312
P.D. 97-362
P.D. 97-427
P.D. 97-450
P.D. 97-470
P.D. 98-40
P.D. 98-42
P.D. 98-154
P.D. 98-160
P.D. 99-12
P.D. 99-14
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BPOL Related

Attorney General Opinions by

Subject Matter in Chonological

Sequence

This index is an updated version of the original list which was prepared by the staff of the City of Chesapeake for the *1997 BPOL Guidelines.* The department utilized the Attorney General's Web site in updating the index.

REQUEST FOR BPOL ADVISORY OPINION

A. Name of requesting party:

Local tax official or business: _____

Address: _____

Locality or localities involved: _____

Date request made: _____ Telephone: _____ FAX: _____
E-mail: _____

B. On the lines below, please fully describe the facts on which you seek an opinion and sign Section C on Page 2. Please attach additional sheets and copies of pertinent documentation to this form as necessary.

_____

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REQUEST FOR BPOL ADVISORY OPINION

C. Before the Department of Taxation can respond to this request, this form must be signed. If the requesting party is a locality, this form must be signed by the Commissioner of the Revenue, Director of Finance, or other person authorized to sign on behalf of such persons. If the requesting party is a Business, this form must be signed by an authorized representative of the Business.

Signature:

I understand that the department may contact [my local tax official or, if an opinion is being requested by a locality, "the Business"] for purposes of answering my question(s).

Signature: _____

Title: _____