



**MOTION: GERLACH**

**February 27, 2024  
Regular Meeting  
Ordinance No. 24-01**

**SECOND: DUFFY**

**RE: Amending the License Tax (BPOL) Ordinance to Conform Administrative Procedures to State Law**

**ACTION: APPROVED: Ayes: 7; Nays: 0**

**FIRST READ: February 13, 2024**

**SECOND READ: February 27, 2024**

### **Sec. I. Introduction.**

The City levies an annual business license tax under the authority of Constitution of Virginia Article VII §3 and Code of Virginia Title 58.1 Chapter 37, "License Taxes." Code of Virginia §58.1-3703.1 sets forth uniform local ordinance provisions, and requires that every ordinance levying a license tax shall include provisions substantially similar to those in that statute. The provisions for appeals of license tax assessments and classifications have been updated in the Code of Virginia. One purpose of this ordinance is to update the City Code to reflect those changes, and to make the local appeals procedures substantially similar to those prescribed.

In addition, state law sets out requirements for the formatting of any license tax bill that imposes a penalty or interest; and makes provision for resolution of apportionment issues. This ordinance makes these changes to the City Code.

State law authorizes the Department of Taxation to render an advisory opinion or even resolve a dispute when taxing authorities are unable to reach agreement on the apportionment of business license taxes owed by a business located in both jurisdictions. This provision is added to the City Code by this ordinance.

Finally, since about 1967, the City Code has required a separate BPOL license for each member of a firm or company of persons practicing a profession regulated by the Commonwealth of Virginia. This provision is no longer consistent with modern business practices. This ordinance repeals this requirement.

### **Sec. II. City Code amendment.**

1. City Code §70-301, "Definitions," is amended to add the following definitions:

**APPEALABLE EVENT**

*An increase in the assessment of a local license tax payable by a taxpayer, the denial of a refund, or the assessment of a local license tax where none previously was assessed, arising out of the local assessing official's (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 local 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.*

*An appealable event shall include a taxpayer's appeal of the classification applicable to a business, including whether the business properly falls within a business license subclassification established by the locality, regardless of whether the taxpayer's appeal is in conjunction with an assessment, examination, audit, or any other action taken by the locality.*

**FRIVOLOUS**

*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**

*A finding, based upon specific facts, that a taxpayer designs 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.*

2. City Code §70-311, "Separate license required for each member of certain firms," is repealed.

**~~Sec. 70-311. Separate license required for each member of certain firms.~~**

- ~~A. A separate revenue license shall be obtained by each member of a firm or company of persons practicing any profession or calling which is regulated by the laws of the commonwealth for the practicing of which profession or calling a license is required by Code of Virginia, § 54.1-100 et seq.~~

B. ~~The gross receipts of a person practicing a profession that is regulated by the laws of this state for which a separate revenue license measured by gross receipts is required for each member of a firm or company shall consist of his salary and such part of the gross receipts of the association remaining after the payment of salaries to all the associates as bears the same ratio of all such remaining gross receipts of his ownership in the association bears to the ownership therein of all the associates.~~

3. City Code §70-319, [Situs of gross receipts] – Apportionment agreements, is amended as follows:

#### **Sec. 70-319 Same- Apportionment agreements**

The commissioner may enter into agreements with any other political subdivision of the state concerning the manner in which gross receipts shall be apportioned among definite places of business. However, the sum of the gross receipts apportioned by any such agreement shall not exceed the total gross receipts attributable to all of the definite places of business affected thereby. 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% of its gross receipts from all locations in the affected jurisdictions, the commissioner 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 commissioner or taxpayer may seek an advisory opinion from the Department of Taxation pursuant to § 58.1-3701; notice of the request shall be given to the other party. Notwithstanding the provisions of § 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 § 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.*

4. City Code §70-321, “Appeals and rulings,” is amended as follows:

#### **Sec. 70-321 Appeals and rulings.**

A. Any person assessed with a license tax under this article as the result of an ~~audit~~ *appealable event* may ~~apply within 90 days from the date of assessment to the commissioner for a correction of the assessment~~ *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.* The ~~application~~ *appeal* must be filed in good faith and sufficiently

identify the taxpayer, the ~~audit~~ *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 may hold a conference with the taxpayer, if requested by the taxpayer, or require the submission of additional information and documents, *an audit or further audit, or other evidence deemed necessary for a proper and equitable determination of the application appeal.* The assessment *placed at issue* shall be deemed prima facie correct. The commissioner shall undertake a full review of the taxpayer's claims and issue a determination to the taxpayer setting forth *the facts and arguments in support of its his or her position decision.* ~~Every assessment pursuant to an audit shall be accompanied by a written explanation of the taxpayer's right to seek correction and the specific procedure to be followed in the City (e.g., the name and address to which an application should be directed).~~

*The taxpayer may at any time also file an administrative appeal of the classification applicable to the taxpayer's business, including whether the business properly falls within a business license subclassification established by the City. However, the appeal of the classification of a business shall not apply to any license year for which the Tax Commissioner has previously issued a final determination relating to any license fee or license tax imposed upon the taxpayer's business for the year. In addition, any appeal of the classification of a business shall in no way affect or change any limitations period prescribed by law for appealing an assessment.*

- B. *Every assessment made by the commissioner 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, the name and address to which the appeal should be directed, an explanation of the required content of the appeal, and the deadline for filing the appeal. These procedures shall be posted on the City's website.*
- C. *Provided an timely and complete application administrative appeal is made within 90 days of an assessment filed, collection activity with respect to the amount in dispute shall be suspended until a final determination is issued by the commissioner, unless the commissioner determines (i) that collection would be jeopardized by delay, or (ii) that the taxpayer has not responded to a request for relevant information after a reasonable time, or (iii) that the appeal is frivolous. Interest shall accrue in accordance with the provisions of § 70-325, but no further penalty shall be imposed while collection action is suspended. For purposes of this subsection, the term "jeopardized by delay" includes a finding that the application is frivolous, or that a taxpayer desires to depart quickly from the locality, to remove his property therefrom, to conceal himself or his property therein, or to do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.*



- D. *Any taxpayer whose administrative appeal to the commissioner 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, elect to treat the appeal as denied and appeal the assessment or classification of the taxpayer's business to the Tax Commissioner as provided below. The Tax Commissioner shall not consider an appeal filed pursuant to the provisions of this subsection if he finds that the absence of a final determination on the part of the commissioner was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the commissioner to make his or her determination.*
- E. *Any person assessed with a license tax under this article as a result of ~~an audit~~ a determination or that has received a determination with regard to the person's appeal of the license classification or subclassification applicable to the person's business, that is adverse to the position asserted by the taxpayer in such appeal may ~~apply~~ appeal within 90 days of the determination by the commissioner ~~on an application pursuant to Subsection A of this section~~ to the state Tax Commissioner for a correction of such assessment. 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. The Tax Commissioner shall permit the commissioner to participate in the proceedings, and ~~The tax commissioner~~ shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's application, unless the taxpayer and the commissioner are notified that a longer period will be required. The application shall be treated as an application pursuant to Code of Virginia, § 58.1-1821, and the tax commissioner may issue an order correcting such assessment or correcting the license classification or subclassification pursuant to Code of Virginia, § 58.1-1822. ~~Following such an order, either the taxpayer or the commissioner may apply to the appropriate circuit court pursuant to Code of Virginia, § 58.1-3984. However, the burden shall be on the party making the application 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 an application to correct an assessment merely because the tax commissioner has ruled on it.~~*
- F. Upon receipt of a notice of intent to file an appeal to the tax commissioner under Subsection ~~E~~ of this section, the commissioner shall further suspend collection activity until a final determination is issued by the tax commissioner, unless the commissioner determines (i) that collection would be jeopardized by delay, ~~or~~ (ii) that the taxpayer has not responded to a request for relevant information after a reasonable time; ~~or~~ (iii) that the appeal is frivolous. Interest shall accrue in accordance with the provisions of § 70-325, but no further penalty shall be imposed while collection action is suspended. ~~For purposes of this subsection, the term "jeopardized by delay" shall have the same meaning as set forth in Subsection B of this section.~~ The requirement that collection activity be suspended shall cease unless an appeal is filed and served on the necessary parties within 30 days of the service of notice of intent to file such an appeal.

G. *Promptly upon receipt of the final determination of the Tax Commissioner with respect to an appeal, the commissioner 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.*

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

*(3) If the determination of the Tax Commissioner does not set forth a specific amount of tax due, or otherwise requires the commissioner 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 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 shall issue a bill to the taxpayer for the amount due, together with interest accrued and penalty, if any is authorized by this section, 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 shall promptly commence the steps necessary to undertake such new or revised assessment or to determine the amount of refund due in the case of a correction to the license classification or subclassification of the business, 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 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 or determination of the amount of the refund.*

H. *The provisions of Code of Virginia §58.1-3703.1 (7), governing judicial review of a*

*determination of the Tax Commissioner, as they may be amended from time to time, are incorporated herein by reference.*

*I. Any taxpayer or authorized representative may request a written ruling regarding the application of the tax to a specific situation from the commissioner. 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. In addition, the taxpayer or authorized representative may request a written ruling with regard to the classification applicable to the taxpayer's business, including whether the business properly falls within a business license subclassification established by the City. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if (i) there is a change in the law, or a court decision, or the guidelines issued by the Department of Taxation upon which the ruling was based; or (ii) the commissioner 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.*

3. City Code §70-325, "Penalties and interest," is amended to add a new subsection G as follows:

**Sec. 70-325 Penalties and interest**

[Subsections A through F are not amended.]

*G. Any bill issued by commissioner that includes, and any communication from the commissioner that imposes, a penalty or interest shall separately state the total amount of tax owed, the amount of any interest assessed, and the amount of the penalty imposed.*

**Sec. III. Effective date.**

This ordinance shall become effective immediately upon adoption.

**Votes:**

**Ayes:** Devine, Frye, Duffy, Gerlach, Graham, Holmes, Mackintosh

**Nays:** None

**Absent from Vote:** None

**Absent from Meeting:** None

Approved as to form:

  
Kathleen Dooley, City Attorney

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**Clerk's Certificate**

*I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Ordinance No. 24-01 duly adopted at a meeting of the City Council meeting held February 27, 2024 at which a quorum was present and voted.*

  
Tonya B. Lacey, MMC  
Clerk of Council