EXHIBIT NO. 1

17
6-14-05

City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 7, 2005

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER

SUBJECT: CONSIDERATION OF AN ORDINANCE TO REFORM THE BUSINESS LICENSE TAX RELIEF FOR SMALL AND MEDIUM SIZED BUSINESSES

ISSUE: Consideration of an ordinance, which provides business license tax relief, reform and simplification for small and medium sized businesses in their first two years of operation

RECOMMENDATION: That City Council pass the proposed business license tax ordinance on first reading and schedule it for public hearing, second reading and final passage on Tuesday, June 21.

DISCUSSION: Since the business license tax transformation across Virginia nearly fifty years ago from a flat fee tax system to one based on gross receipts, the business license tax in Virginia for new businesses in their first three years of operation has been a complex and convoluted tax for businesses to understand and for local governments to administer. This complexity has been driven by the practice of having businesses base their first two years taxes, which are paid up front on estimated future gross receipts, rather than pay after the tax year is complete based on actual gross receipts. After each of these estimated years it has been necessary to "true-up" the tax paid by using actual rather than estimated gross receipts. Finally, having new, start-up small and medium sized businesses pay their business license taxes up front before they earned their estimated gross also exacerbates the cash flow squeeze that most businesses experience when they first get started. This method of up front taxation based on estimated gross receipts and subsequent true-ups, while seeming overly complex, is the standard practice in Virginia.

As part of the FY 2006 budget considered by Council this spring, it was proposed, and Council approved, that the City undertake a major reform of its business license tax system in order to benefit small and medium sized businesses. What is proposed, in general terms, is that businesses which have estimated gross receipts of $2 million or less in the first year of operation would pay a one-time $50 fee to obtain its business license, then for the second year of operations pay the business license tax based on the first year actual gross receipts, and pay the business license tax in the third year based upon the second year actuals. Such a new reformed system, which may be the first in Virginia to be structured this way, reduces the business's tax burden to only $50 in the first year, and then on average cuts the tax burden in about half for the second year. True-ups are eliminated for these businesses. By implementing these reforms of the business license tax, the

City will be leaving needed funds in start-up businesses' coffers at a time when those businesses most need these funds. In addition, this tax reform will serve as an incentive for businesses to locate in Alexandria, and represent a very cost effective economic development advantage for the City.

The proposed ordinance details the following major concept changes to the business license tax structure:

- A person beginning a business which is subject to a license tax under the provisions of this Chapter shall estimate the amount of the gross receipts that he or she will receive between the date of beginning business and the end of the calendar year. The business license tax for the first year of operation shall be computed upon that estimate. The first year license tax/fee will be based on the following tiers:

Estimated Gross Receipts	**Tax Payment**
$0 - $100,000	$0
$100,001 - $2,000,000	$50 fee
$2,000,001 and greater	Estimated Gross Receipts Multiplied by Tax Rate

- Businesses in the second calendar year of operation will pay a license tax based on actual gross receipts earned during the prior calendar year, unless the **actual gross receipts** for the first license year of the business were over $2,000,000.

- If the actual gross receipts were over $2,000,000 for the first license year of operation and the business start date is after January 1, a business must estimate gross receipts for its second license year of operation.

- If the business estimated gross receipts of $2,000,000 or less for its first license year and paid the $50 fee, but actual gross receipts for the first license year exceeded $2,000,000, the business must pay an adjusted tax for its first year in business. The adjusted tax is calculated using the first year's actual gross receipts multiplied by the tax rate, minus the $50 fee paid for the first license year. Additionally, that business must pay the second license year tax based on estimated gross receipts for the second tax year. In the third year, that business pays the third year license paid on its second year actuals, as well as trues-up (credit or refund) the difference between its second year estimated and second year actual receipts.

- Whenever a taxpayer's license tax is computed upon estimated gross receipts of $2,000,001 or more, any over/underestimate shall be subject to correction. In the case of an underestimate, the City will assess the person with any additional license tax found to be due after the close of the license year, and, in case of an overestimate, the business shall be entitled to a credit or refund.

- The second year license tax/fee will be based on the following tiers:

First Year	
Actual Gross Receipts	**Tax Payment**
$0 - $9,999	$0
$10,000 - $99,999	$50 fee
$100,000 and greater	Actual Gross Receipts of the First Year Multiplied by Tax Rate

- All businesses must maintain tax records for current and three prior license years and are subject to audit by the Finance Department.

- The above tax rate structure does not apply to the following business tax categories: renting residential/commercial properties, contractors, wholesalers, amusements, utility companies and regulatory activities.

- Other changes provide the detailed mechanics for the above concepts and eliminate inconsistencies in the existing Code.

FISCAL IMPACT: It is roughly estimated that, based on the number and tax returns of new businesses received in prior years, the proposed ordinance will benefit approximately 100 businesses in FY 2006 at a cost of $0.2 million. In FY 2007 and beyond, the estimated cost is $0.4 million and would benefit approximately 200 businesses. As a result of the tax simplification more businesses will receive a benefit in the second year of operation than the first. The FY 2006 revenue projections which were part of the FY 2006 approved budget reflected a $0.2 million reduction in estimated revenues due to this proposed initiative.

ATTACHMENT: Proposed Council Ordinance

STAFF:
Mark Jinks, Assistant City Manager for Fiscal and Financial Affairs
D. A. Neckel, Director of Finance

EXHIBIT NO. 2

Introduction and first reading:	6/14/05
Public hearing:	6/21/05
Second reading and enactment:	6/21/05

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Sections 9-1-4 (LICENSE YEAR) , 9-1-6 (LEVY), 9-1-12 (PENALTY FOR FAILURE TO PAY WHEN DUE), 9-1-18 (BEGINNER'S LICENSE WHEN TAX IS BASED ON GROSS RECEIPTS), 9-1-42 (INVESTIGATIONS GENERALLY, RECORD-KEEPING, AUDIT AUTHORITY), 9-1-43 (APPEALS), and 9-1-44 (ADMINISTRATIVE RULINGS), and to enact new Sections 9-1-18.1 (BEGINNER'S LICENSE FOR CERTAIN BUSINESS WHEN TAX IS BASED ON GROSS RECEIPTS), 9-1-43.1 (ADMINISTRATIVE APPEAL TO STATE TAX COMMISSIONER), and 9-1-43.2 (JUDICIAL REVIEW OF DETERMINATION OF STATE TAX COMMISSIONER), of Article A (GENERAL PROVISIONS); to amend and reordain Section 9-1-78 (WHOLESALE MERCHANTS) of Article C (NONREGULATORY LICENSES), and to amend and reordain Section 9-1-116 (SAME-FEES) of Article E (DISTRESS MERCHANDISE SALES), all of Chapter 1 (BUSINESS LICENSES), Title 9 (LICENSING AND REGULATION), of the Code of the City of Alexandria, Virginia, 1981, as amended

Summary

The proposed ordinance revised the procedures for reporting and payment of license taxes for persons beginning business in the City. The proposed ordinance also revises the Code as it relates to business licenses, to make the Code consistent with revisions to the Code of Virginia and to make certain technical changes.

Sponsor

Staff

Mark Jinks, Assistant City Manager
Bernard Caton, Legislative Director
Daniel A. Neckel, Director of Finance
Debbie Kidd, Division Chief, Revenue
Ignacio B. Pessoa, City Attorney
Roderick B. Williams, Assistant City Attorney

Authority

§§ 58.1-3700, et seq., Code of Virginia
Chapter 927, Virginia Acts of Assembly, 2005 Reconvened Session
§§ 2.02(a)(5) and 5.20, Alexandria City Charter

Estimated Costs of Implementation

None

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None

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EXHIBIT NO. 3

ORDINANCE NO. _____

AN ORDINANCE to amend and reordain Sections 9-1-4 (LICENSE YEAR) , 9-1-6 (LEVY), 9-1-12 (PENALTY FOR FAILURE TO PAY WHEN DUE), 9-1-18 (BEGINNER'S LICENSE WHEN TAX IS BASED ON GROSS RECEIPTS), 9-1-42 (INVESTIGATIONS GENERALLY, RECORD-KEEPING, AUDIT AUTHORITY), 9-1-43 (APPEALS), and 9-1-44 (ADMINISTRATIVE RULINGS), and to enact new Sections 9-1-18.1 (BEGINNER'S LICENSE FOR CERTAIN BUSINESS WHEN TAX IS BASED ON GROSS RECEIPTS), 9-1-43.1 (ADMINISTRATIVE APPEAL TO STATE TAX COMMISSIONER), and 9-1-43.2 (JUDICIAL REVIEW OF DETERMINATION OF STATE TAX COMMISSIONER), of Article A (GENERAL PROVISIONS); to amend and reordain Section 9-1-78 (WHOLESALE MERCHANTS) of Article C (NONREGULATORY LICENSES), and to amend and reordain Section 9-1-116 (SAME-FEES) of Article E (DISTRESS MERCHANDISE SALES), all of Chapter 1 (BUSINESS LICENSES), Title 9 (LICENSING AND REGULATION), of the Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Sections 9-1-4, 9-1-6, 9-1-12, 9-1-18, 9-1-42, 9-1-43, and 9-1-44 of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby are, amended and reordained, and that Sections 9-1-18.1, 9-1-43.1, and 9-1-43.2 be, and the same hereby are, enacted as part of Article A, Chapter 1, Title 9, of the Code of the City of Alexandria, Virginia, 1981, as amended, to read as follows:

Section 9-1-4 License year.

Except where otherwise herein specifically provided, the license year shall begin on January 1 in each year and shall end on December 31 of each year. <u>The business license shall remain valid until February 28 of the following year.</u>

Section 9-1-6 Levy.

(a) For the privilege of engaging in a business in the city, there are hereby levied upon, and there shall be assessed against and collected from, the person engaging in the business an annual license tax as set forth in this chapter, which license tax shall be for the support of the city government, the payment of the city debts and interest thereon and for other municipal purposes.

(b) Except as provided in sections <u>and 9-1-18.1</u> of this chapter, any license tax which is based in whole or in part on gross receipts shall be measured by the gross receipts ~~with situs in the city, under section 9-1-7 for the license year next~~

~~preceding the then current license year~~ from the base year as defined in section 9-1-2 of this chapter.

Section 9-1-12 Penalty for failure to pay when due.

(a) There shall be a penalty of 10 percent or $10, whichever is greater, added to all license taxes levied under the provisions of this chapter that are unpaid on the due dates thereof and are, therefore, delinquent.

(b) ~~In addition thereto, interest at the rate of 10 percent per annum on the delinquent license taxes and penalty shall commence on the first day following the day such taxes are due.~~ Penalty shall commence on the first day following the day such taxes are due.

(c) ~~The penalties~~ Penalty and interest shall not be imposed, or if imposed shall be abated, by the director if the failure to pay license taxes when due was not the fault of the licensee. In order to demonstrate lack of fault, the licensee must show that he acted responsibly and that his failure to pay was due to events beyond his control. The term "acted responsibly" means that (i) the licensee exercised the same care that a reasonable and prudent person engaged in business would have exercised in determining the filing obligations for the business, and (ii) the licensee undertook significant steps to avoid or to mitigate his failure, such as promptly rectifying the failure once discovered.

Section 9-1-18 Beginner's license when tax is based on gross receipts.

(a) Every person beginning a business which is subject to a license tax under the provisions of this chapter based in whole or in part on gross receipts shall estimate the amount of the gross receipts that he will receive between the date of beginning business and the end of the then current license year, and his license tax for the current year shall be computed upon that estimate, according to the provisions of this section, except as provided in Section 9-1-18.1.

~~(b) Every person conducting a business which is subject to a license tax under the provisions of this chapter based in whole or in part on gross receipts who began the business during the license year next preceding the then current license year shall estimate the amount of the gross receipts the business will receive during the current license year, and his license year shall be computed upon that estimate.~~

(b) For the first calendar year of operation of the business (the then current license year), the license tax shall be at the applicable rate, based upon estimated gross receipts for that year.

(c) For the second calendar year of the operation of the business:

(1) if the gross receipts for the previous year (the first calendar year of operation of the business) were less than or equal to $2,000,000, his license tax shall be $50, plus an amount determined, based upon actual gross receipts for the previous year (the first calendar year of operation of the business), as follows:

(A) if the gross receipts for the previous year were less than or equal to $10,000, $0;

(B) if the gross receipts for the previous year were greater than $10,000, but less than or equal to $100,000, $50; or

(C) if the gross receipts for the previous year were greater than $100,000, an amount as determined at the applicable rate; and

all businesses under this subsection (c)(1) shall also receive a credit for the license tax assessed in subsection (b) of this section; or

(2) if the gross receipts for the previous year (the first calendar year of operation of the business) were greater than $2,000,000, his license tax shall be the total of:

(A) an amount determined at the applicable rate, based upon actual gross receipts for the previous year; and

(B) an amount determined, based upon estimated gross receipts for the second calendar year of operation of the business, as follows:

(i) if such gross receipts are estimated to be less than or equal to $10,000, $0;

(ii) if such gross receipts are estimated to be greater than $10,000, but less than or equal to $100,000, $50; or

(iii) if such gross receipts are estimated to be greater than $100,000, an amount as determined at the applicable rate; and

all business under this subsection (c)(2) shall also receive a credit for the license tax assessed in subsection (b) of this section.

(d) For the third calendar year of the operation of the business:

(1) if the gross receipts for the first calendar year of operation of the business were less than or equal to $2,000,000, his license tax shall be in an amount

determined, based upon actual gross receipts for the previous year (the second calendar year of operation of the business), as follows:

(A) if the gross receipts for the previous year were less than or equal to $10,000, $0;

(B) if the gross receipts for the previous year were greater than $10,000, but less than or equal to $100,000, $50; or

(C) if the gross receipts for the previous year were greater than $100,000, an amount as determined at the applicable rate; or

(2) if the gross receipts for the first calendar year of operation of the business were greater than $2,000,000, his license tax shall be the total of:

(A) an amount determined, based upon actual gross receipts for the previous year (the second calendar year of operation of the business), less a credit for that portion of the license tax assessed in subsection (c)(2)(B) of this section, as follows:

(i) if the gross receipts were less than or equal to $10,000, $0;

(ii) if the gross receipts were greater than $10,000, but less than or equal to $100,000, $50; or

(iii) if the gross receipts were greater than $100,000, an amount as determined at the applicable rate; and

(B) an amount determined, based upon actual gross receipts for the previous year (the second calendar year of operation of the business), as follows:

(i) if the gross receipts were less than or equal to $10,000, $0;

(ii) if the gross receipts were greater than $10,000, but less than or equal to $100,000, $50; or

(iii) if the gross receipts were greater than $100,000, an amount as determined at the applicable rate.

(e) For the fourth and subsequent calendar years of the operation of the business:

(1) if the gross receipts for the previous year were less than or equal to $10,000, no license tax shall be imposed for such year;

(2) if the gross receipts for the previous year were greater than $10,000, but less than or equal to $100,000, his license tax shall be $50 for such year; or

(3) if the gross receipts for the previous year were greater than $100,000, his license tax shall be at the applicable rate, based upon actual gross receipts for the previous year.

~~(c)~~ (f) Whenever a license tax is so computed upon estimated gross receipts of greater than $2,000,000, any erroneous estimate shall be subject to correction. In the case of an underestimate, the director shall assess the person with any additional license tax found to be due after the close of the current license year, and, in case of an overestimate, the licensee shall be entitled to a credit upon his license taxes payable the following year.

Section 9-1-18.1 Beginner's license for certain businesses when tax is based on gross receipts.

(a) The provisions of this section shall apply to every person beginning a business which is subject to a license tax under the provisions of this chapter based in whole or in part on gross receipts, and who estimates that the amount of the gross receipts that he will receive between the date of beginning business and the end of the then current license year will be less than or equal to $2,000,000.

(b) For the first calendar year of operation of the business (the then current license year), his license tax shall be $50, unless the estimate of the amount of the gross receipts that he will receive between the date of beginning business and the end of the then current license year is less than or equal to $100,000, in which case no license tax shall be imposed for the first calendar year of operation of the business.

(c) For the second calendar year of the operation of the business:

(1) if the gross receipts for the previous year (the first calendar year of operation of the business) were less than or equal to $10,000, no license tax shall be imposed for the second calendar year of operation of the business;

(2) if the gross receipts for the previous year (the first calendar year of operation of the business) were greater than $10,000, but less than or equal to $100,000, his license tax shall be $50;

(3) if the gross receipts for the previous year (the first calendar year of operation of the business) were greater than $100,000, but less than or equal to $2,000,000, his license tax shall be at the applicable rate, based

upon actual gross receipts for the previous year (the first calendar year of operation of the business); or

(4) if the gross receipts for the previous year (the first calendar year of operation of the business) were greater than $2,000,000, his license tax shall be the total of:

(A) an amount determined at the applicable rate, based upon actual gross receipts for the previous year (the first calendar year of operation of the business); and

(B) an amount determined, based upon estimated gross receipts for the current year, as follows:

(i) if such gross receipts are estimated to be less than or equal to $10,000, $0;

(ii) if such gross receipts are estimated to be greater than $10,000, but less than or equal to $100,000, $50; or

(iii) if such gross receipts are estimated to be greater than $100,000, an amount as determined at the applicable rate.

(5) A business with gross receipts for the previous year (the first calendar year of operation of the business) greater than $2,000,000 shall also receive a credit from the amount due of any amount paid under subsection (b) of this section.

(d) For the third calendar year of the operation of the business:

(1) if the gross receipts for the first calendar year of operation of the business were less than or equal to $2,000,000, his license tax shall be determined as follows, based upon the actual gross receipts for the previous year (the second calendar year of operation of the business):

(A) if the gross receipts for the previous year were less than or equal to $10,000, $0;

(B) if the gross receipts for the previous year were greater than $10,000, but less than or equal to $100,000, $50; or

(C) if the gross receipts for the previous year were greater than $100,000, an amount determined at the applicable rate; or

(2) if the gross receipts for the first calendar year of operation of the business were greater than $2,000,000, his license tax shall be the total of:

(A) an amount determined, based upon actual gross receipts for the previous year (the second calendar year of operation of the business), less a credit for the tax paid on the amount of gross receipts for the previous year estimated in subsection (c)(4)(B) of this section, as follows:

(i) if the gross receipts for the previous year were less than or equal to $10,000, $0;

(ii) if the gross receipts for the previous year were greater than $10,000, but less than or equal to $100,000, $50; or

(iii) if the gross receipts were greater than $100,000, an amount as determined at the applicable rate; and

(B) an amount determined, based upon actual gross receipts for the previous year (the second calendar year of operation of the business), as follows:

(i) if the gross receipts for the previous year were less than or equal to $10,000, $0;

(ii) if the gross receipts for the previous year were greater than $10,000, but less than or equal to $100,000, $50; or

(iii) if the gross receipts were greater than $100,000, an amount as determined at the applicable rate.

(e) For the fourth and subsequent calendar years of the operation of the business:

(1) if the gross receipts for the previous year were less than or equal to $10,000, no license tax shall be imposed for such year;

(2) if the gross receipts for the previous year were greater than $10,000, but less than or equal to $100,000, his license tax shall be $50 for such year; or

(3) if the gross receipts for the previous year were greater than $100,000, his license tax shall be at the applicable rate, based upon actual gross receipts for the previous year.

(f) Whenever a license tax is so computed upon estimated gross receipts of greater than $2,000,000, any erroneous estimate shall be subject to correction. In the case of an underestimate, the director shall assess the person with any additional license tax found to be due after the close of the current license year, and, in case

of an overestimate, the licensee shall be entitled to a credit upon his license taxes payable the following year.

(g) The provisions of this section shall not apply to the following business tax categories: renting by owners of dwelling units or commercial establishments, contractors, wholesale merchants, amusements, public utilities, and regulatory activities.

Section 9-1-42 Investigations generally; record-keeping; audit authority.

(a) The director may make investigations of the things and matters in this chapter laid to his charge, and shall have power to summon before him any person whom he believes may have knowledge or evidence touching upon the conduct of any business in the city or touching upon the possession or operation of any coin-operated machine in the city, and to require such person to answer under oath any question relating to the matters under investigation.

(b) Every person who is assessable with a license tax shall keep ~~accurate and correct~~ sufficient records ~~and books of accounts which reflect true tax liability for the current license year and the three previous license years. These records and books of accounts may be kept on either a cash or an accrual basis but the system of accounts shall be the same as that used for federal income taxes. These records and books of accounts shall be kept in such a manner so as~~ to enable the director to verify the correctness of the tax paid for the ~~current~~ license years assessable ~~and the three previous license years~~ and to enable the director 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 shall be open to inspection and examination by the director in order to allow the director to establish whether a particular receipt is directly attributable to the taxable privilege exercised within the city. ~~In the event that the director conducts an audit pursuant to his authority in section 58.1-3109 of the Code of Virginia (1950), the~~ The director shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there. In the event the records are maintained outside this jurisdiction, copies of the appropriate books and records shall be sent to the director's office upon demand.

Section 9-1-43 Administrative Appeals to the Director of Finance.

(a) Definitions. For purposes of this section:

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

"Appealable event" means an increase in the assessment of a 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.

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

"Jeopardize by delay" means a finding, based on specific facts, that a taxpayer desires to (i) depart quickly from the locality; (ii) remove his property therefrom; (iii) conceal himself or his property; 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.

~~(a)~~ (b) Filing and contents of administrative appeal. Any person assessed with a license tax as a result of an appealable event as defined in this section may~~, within 90 days from the date of such assessment, apply to~~ 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 director ~~for a correction of the assessment~~. The ~~application~~ appeal ~~shall~~ must be filed in good faith and ~~shall~~ sufficiently identify the ~~licensee~~ taxpayer, the tax periods covered by the challenged assessments, the amount in dispute, the remedy sought, each alleged error in the assessment, the grounds upon which the ~~licensee~~ taxpayer relies, and any other facts relevant to the ~~licensee's~~ taxpayer's contention. The director may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, an audit or further audit, or other evidence deemed necessary for a proper and equitable determination of the appeal ~~and may conduct an audit~~. The assessment placed at issue in the appeal shall be deemed prima facie correct. The director shall undertake a full review of the ~~licensee's~~ taxpayer's claims and~~, upon the conclusion of such review,~~ issue a written

determination ~~on the appeal~~ to the taxpayer setting forth the ~~director's position~~ facts and arguments in support of his decision.

~~(b) Any licensee aggrieved by an audit conducted by the director may appeal the audit findings in the manner set forth in subsection (a). Any new or revised assessment resulting from an audit shall be accompanied by a written explanation of the licensee's right to apply for a correction of the assessment and of the specific procedure to be followed.~~

(c) Notice of right of appeal and procedures. Every assessment made by a director pursuant to an appealable event shall include or be accompanied by a written explanation of the taxpayer's right to file an administrative appeal and the specific procedures to be followed in the jurisdiction (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.

(d) Suspension of collection activity during appeal. Provided a timely and complete administrative appeal is filed, collection activity with respect to the amount in dispute shall be suspended until a final determination is issued by the director, unless (i) the director determines that collection would be jeopardized by delay as defined in this section; (ii) the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) the appeal is frivolous as defined in this section. Interest shall accrue in accordance with the provisions of Section 9-1-46, but no further penalty shall be imposed while collection action is suspended.

(e) Procedure in event of nondecision. Any taxpayer whose administrative appeal to the director pursuant to the provisions of this section has been pending for more than one year without the issuance of a final determination may, upon not less than 30 days' written notice to the director, elect to treat the appeal as denied and appeal the assessment to the State Tax Commissioner in accordance with the provisions of subdivision 6 of this subsection. The State 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 director was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the director to make his determination.

Section 9-1-43.1 Administrative Appeal to the State Tax Commissioner.

(a) Any person assessed with a local license tax as a result of a determination, upon an administrative appeal to the director pursuant to Section 9-1-43, that is adverse to the position asserted by the taxpayer in such appeal may appeal such assessment to the State Tax Commissioner within 90 days of the date of the determination by the director. The appeal shall be in such form as the State Tax Commissioner may prescribe and the taxpayer shall serve a copy of the appeal

upon the director. The State Tax Commissioner shall permit the director to participate in the proceedings, and shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's application, unless the taxpayer and the director are notified that a longer period will be required. The appeal shall proceed in the same manner as an application pursuant to Virginia Code § 58.1-1821 and amendment(s) thereto, and the State Tax Commissioner may issue an order correcting such assessment pursuant to Virginia Code § 58.1-1822 and any amendment(s) thereto.

(b) Suspension of collection activity during appeal. On receipt of a notice of intent to file an appeal to the State Tax Commissioner under subsection (a) of this section, collection activity with respect to the amount in dispute shall be suspended until a final determination is issued by the State Tax Commissioner, unless (i) the director determines that collection would be jeopardized by delay as defined in Section 9-1-43; (ii) the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) the appeal is frivolous as defined in Section 9-1-43. Interest shall accrue in accordance with the provisions of Section 9-1-46, but no further penalty shall be imposed while collection action is suspended. The requirement that collection activity be suspended shall cease unless an appeal pursuant to subsection (a) of this section is filed and served on the necessary parties within 30 days of the service of notice of intent to file such appeal.

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

(1) If the determination of the State Tax Commissioner sets forth a specific amount of tax due, the director shall issue a bill to the taxpayer for such amount due, together with interest accrued, within 30 days of the date of the determination of the State Tax Commissioner.

(2) If the determination of the State Tax Commissioner sets forth a specific amount of refund due, the director 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 State Tax Commissioner.

(3) If the determination of the State Tax Commissioner does not set forth a specific amount of tax due, or otherwise requires the director 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 director 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 State Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the State Tax Commissioner, whichever is later. The director shall issue a bill to the taxpayer for the amount due, together with interest accrued, within 30 days of the date of the new assessment.

(4) If the determination of the State Tax Commissioner does not set forth a specific amount of refund due, or otherwise requires the director 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 director 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 State Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the State Tax Commissioner, whichever is later. The director 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.

Section 9-1-43.2 Judicial Review of Determination of State Tax Commissioner.

(a) Judicial review. Following the issuance of a final determination of the State Tax Commissioner pursuant to Section 9-1-43.1, the director may apply to the circuit court for judicial review of the determination, or any part thereof, pursuant to Virginia Code § 58.1-3984 and any amendment(s) thereto. In any such proceeding for judicial review of a determination of the State Tax Commissioner, the burden shall be on the party challenging the determination of the State Tax Commissioner, or any part thereof, to show that the ruling of the State Tax Commissioner is erroneous with respect to the part challenged. Neither the State Tax Commissioner nor the Virginia Department of Taxation shall be made a party to an application to correct an assessment merely because the State Tax Commissioner has ruled on it.

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

(1) On receipt of a notice of intent to file an application for judicial review, pursuant to Virginia Code § 58.1-3984 and any amendment(s) thereto, of a determination of the State Tax Commissioner pursuant to Section 9-1-43.1, and upon payment of the amount of the tax that is not in dispute together with any penalty and interest then due with respect to such undisputed portion of the tax, the director shall further suspend collection activity while the court retains jurisdiction unless the court, upon

appropriate motion after notice and an opportunity to be heard, determines that (i) the taxpayer's application for judicial review is frivolous, as defined in Section 9-1-43; (ii) collection would be jeopardized by delay, as defined in Section 9-1-43; or (iii) suspension of collection would cause substantial economic hardship to the locality. For purposes of determining whether substantial economic hardship to the locality would arise from a suspension of collection activity, the court shall consider the cumulative effect of then-pending appeals filed within the locality by different taxpayers that allege common claims or theories of relief.

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

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

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

(5) The suspension of collection activity authorized by this subdivision shall not be applicable to any appeal of a local license tax that is initiated by the direct filing of an action pursuant to § 58.1-3984 and any amendment(s) thereto without prior exhaustion of the appeals provided by Sections 9-1-43 and 9-1-43.1.

(c) Suspension of payment of disputed amount of refund due upon city's notice of intent to initiate judicial review.

(1) Payment of any refund determined to be due pursuant to the determination of the State Tax Commissioner of an appeal pursuant to Section 9-1-43.1 shall be suspended if the city serves upon the taxpayer, within 60 days of the date of the determination of the State Tax Commissioner, a notice of intent to file an application for judicial review of the State Tax Commissioner's determination pursuant to § 58.1-3984 and any amendment(s) thereto and pays the amount of the refund not in dispute, including tax and accrued interest. Payment of such refund shall remain suspended while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines

that the city's application for judicial review is frivolous, as defined in this section.

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

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

(d) Accrual of interest on unpaid amount of tax. Interest shall accrue in accordance with the provisions of Section 9-1-46, but no further penalty shall be imposed while collection action is suspended.

Section 9-1-44 Administrative rulings.

Any ~~licensee~~ taxpayer or authorized representative of a taxpayer may request a written ruling from the director regarding the application of the tax levied by this chapter to a specific situation. ~~A licensee~~ Any person requesting such a ruling ~~shall~~ must provide all ~~the~~ facts relevant ~~facts for~~ to the situation placed at issue and may present a rationale for the basis of an interpretation of the law most favorable to the ~~licensee~~ taxpayer. Any misrepresentation ~~by the licensee and any~~ 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 prospectively revoked or prospectively amended if (i) there is a ~~court decision or a change in the law or regulation~~ change in the law, a court decision, or the guidelines issued by the Virginia Department of Taxation upon which the ruling was based, or (ii) the director notifies the ~~licensee~~ taxpayer of a change in the policy or interpretation upon which the ruling was based. ~~A~~ 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 the ruling was in effect.

Section 2. That Section 9-1-78 of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Section 9-1-78 Wholesale merchants.

Every person who engages in or conducts the business of a wholesale merchant in, and who maintains a definite place of business in, the city shall pay for the privilege of doing so an annual license tax of $50 or, if the business' ~~annual gross receipts~~ purchases with situs in the city equal or exceed $100,000, $0.05 for each $100 of all the business' ~~gross receipts~~ purchases with such situs~~, whichever amount is greater~~.

Section 3. That Section 9-1-116 of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Section 9-1-116 Same–fees.

The fee for licenses issued pursuant to this article shall be ~~$30~~ $50 or twenty cents ($0.20) for each $100 of gross receipts from sales during the entire period of the distress merchandise sale, whichever is greater. The license may be renewed without fee under the conditions prescribed in section 9-1-121 of this code.

Section 4. That this ordinance shall become effective July 1, 2005.

WILLIAM D. EUILLE
Mayor

Introduction: 6/14/2005
First Reading: 6/14/2005
Publication:
Public Hearing:
Second Reading
Final Passage:

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17
6-14-05

City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 14, 2005

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER

SUBJECT: CONSIDERATION OF AN ORDINANCE TO REFORM THE BUSINESS LICENSE TAX RELIEF FOR SMALL AND MEDIUM SIZED BUSINESSES

Attached is a revised ordinance to provide business license tax relief and simplification to small and medium sized businesses in their first two years of operation. The copy of the proposed ordinance which was originally sent to Council and this revised ordinance have the same tax effect. The ordinance was revised to make it easier to read and understand.

The original draft ordinance had separate provisions for those businesses whose first year gross receipts were in excess of $2 million and a separate section for those businesses whose gross receipts were less than $2 million. The revised ordinance combines these sections into one easier to read section and thus eliminates one previously proposed new section of the Code (Section 9-1-18.1). Also the revised ordinance specifies that businesses are required to keep sufficient records of their gross receipts for the current year and three prior years. This has been the long-standing standard, as it enables the City to audit tax returns for this self-reported tax.

ATTACHMENT: Revised proposed ordinance

STAFF:
Mark Jinks, Assistant City Manager for Fiscal and Financial Affairs
D. A. Neckel, Director of Finance

17
6-14-05

ORDINANCE NO. ____
[REVISED JUNE 14, 2005]

AN ORDINANCE to amend and reordain Sections 9-1-4 (LICENSE YEAR) , 9-1-6 (LEVY), 9-1-12 (PENALTY FOR FAILURE TO PAY WHEN DUE), 9-1-18 (BEGINNER'S LICENSE WHEN TAX IS BASED ON GROSS RECEIPTS), 9-1-42 (INVESTIGATIONS GENERALLY, RECORD-KEEPING, AUDIT AUTHORITY), 9-1-43 (APPEALS), and 9-1-44 (ADMINISTRATIVE RULINGS), and to enact new Sections 9-1-43.1 (ADMINISTRATIVE APPEAL TO STATE TAX COMMISSIONER), and 9-1-43.2 (JUDICIAL REVIEW OF DETERMINATION OF STATE TAX COMMISSIONER), of Article A (GENERAL PROVISIONS); to amend and reordain Section 9-1-78 (WHOLESALE MERCHANTS) of Article C (NONREGULATORY LICENSES), and to amend and reordain Section 9-1-116 (SAME-FEES) of Article E (DISTRESS MERCHANDISE SALES), all of Chapter 1 (BUSINESS LICENSES), Title 9 (LICENSING AND REGULATION), of the Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Sections 9-1-4, 9-1-6, 9-1-12, 9-1-18, 9-1-42, 9-1-43, and 9-1-44 of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby are, amended and reordained, and that Sections 9-1-43.1, and 9-1-43.2 be, and the same hereby are, enacted as part of Article A, Chapter 1, Title 9, of the Code of the City of Alexandria, Virginia, 1981, as amended, to read as follows:

Section 9-1-4 License year.

Except where otherwise herein specifically provided, the license year shall begin on January 1 in each year and shall end on December 31 of each year. The business license shall remain valid until February 28 of the following year.

Section 9-1-6 Levy.

(a) For the privilege of engaging in a business in the city, there are hereby levied upon, and there shall be assessed against and collected from, the person engaging in the business an annual license tax as set forth in this chapter, which license tax shall be for the support of the city government, the payment of the city debts and interest thereon and for other municipal purposes.

(b) Except as provided in sections 9-1-18 and 9-1-18.1 of this chapter, any license tax which is based in whole or in part on gross receipts shall be measured by the gross receipts ~~with situs in the city, under section 9-1-7 for the license year next~~

~~preceding the then current license year~~ from the base year as defined in section 9-1-2 of this chapter.

Section 9-1-12 Penalty for failure to pay when due.

(a) There shall be a penalty of 10 percent or $10, whichever is greater, added to all license taxes levied under the provisions of this chapter that are unpaid on the due dates thereof and are, therefore, delinquent.

(b) ~~In addition thereto, interest at the rate of 10 percent per annum on the delinquent license taxes and penalty shall commence on the first day following the day such taxes are due.~~ Penalty shall commence on the first day following the day such taxes are due.

(c) ~~The penalties~~ Penalty and interest shall not be imposed, or if imposed shall be abated, by the director if the failure to pay license taxes when due was not the fault of the licensee. In order to demonstrate lack of fault, the licensee must show that he acted responsibly and that his failure to pay was due to events beyond his control. The term "acted responsibly" means that (i) the licensee exercised the same care that a reasonable and prudent person engaged in business would have exercised in determining the filing obligations for the business, and (ii) the licensee undertook significant steps to avoid or to mitigate his failure, such as promptly rectifying the failure once discovered.

Section 9-1-18 Beginner's license when tax is based on gross receipts.

(a) Every person beginning a business which is subject to a license tax under the provisions of this chapter based in whole or in part on gross receipts shall estimate the amount of the gross receipts that he will receive between the date of beginning business and the end of the then current license year, and the license tax for the current year shall be computed upon that estimate, according to the provisions of this section, except as provided in Section 9-1-18(g).

~~(b) Every person conducting a business which is subject to a license tax under the provisions of this chapter based in whole or in part on gross receipts who began the business during the license year next preceding the then current license year shall estimate the amount of the gross receipts the business will receive during the current license year, and his license year shall be computed upon that estimate.~~

(b) For the first calendar year of operation of the business (the then current license year), the license tax shall be at the applicable amount, based upon estimated gross receipts for that year, as follows:

(1) if the estimated gross receipts for the first year are less than $100,000, $0;

(2) if the estimated gross receipts for the first year are greater than or equal to $100,000, but less than $2,000,000, $50; or

(3) if the estimated gross receipts for the first year are greater than or equal to $2,000,000, an amount as determined at the applicable rate.

(c) For the second calendar year of the operation of the business:

(1) if the actual gross receipts for the previous year (the first calendar year of operation of the business) were less than $2,000,000, and the estimated gross receipts for that previous year were less than $2,000,000, the license tax shall be:

(A) if the actual gross receipts for the previous year were less than $10,000, $0;

(B) if the actual gross receipts for the previous year were at least $10,000, but less than $100,000, $50; or

(C) if the actual gross receipts for the previous year were $100,000 or greater, an amount as determined at the applicable rate; and

(2) if the actual gross receipts for the previous year (the first calendar year of operation of the business) were less than $2,000,000, but the estimated gross receipts for that previous year were greater than or equal to $2,000,000, the license tax shall be as follows, less the payment made on the prior year estimate excluding the $50 flat fee component of the tax on the prior year estimate:

(A) if the actual gross receipts for the previous year were less than $10,000, $0;

(B) if the actual gross receipts for the previous year were at least $10,000, but less than $100,000, $50; or

(C) if the actual gross receipts for the previous year were $100,000 or greater, an amount as determined at the applicable rate; and

(3) if the actual gross receipts for the previous year (the first calendar year of operation of the business) were greater than or equal to $2,000,000, the license tax shall be the total of:

(A) an amount determined at the applicable rate, based upon actual gross receipts for the previous year; and

(B) an amount determined, based upon estimated gross receipts for the second calendar year of operation of the business, as follows:

(i) if such gross receipts are estimated to be less than $10,000, $0;

(ii) if such gross receipts are estimated to be at least $10,000, but less than $100,000, $50; or

(iii) if such gross receipts are estimated to be $100,000 or greater, an amount as determined at the applicable rate; and

all businesses under this subsection (c)(3) shall be subject to an adjustment for the license tax assessed in subsection (b) of this section.

(d) For the third and subsequent calendar years of the operation of the business, the license tax shall be based upon actual gross receipts for the immediately previous year, as follows:

(1) if the actual gross receipts for the immediately previous year were less than $10,000, $0;

(2) if the actual gross receipts for the immediately previous year were at least $10,000, but less than $100,000, $50; or

(3) if the actual gross receipts for the immediately previous year were $100,000 or greater, an amount as determined at the applicable rate; and

for the third calendar year of the operation of the business only, all businesses that were assessed a license tax based upon estimated gross receipts under subsection (c)(3)(B) of this section shall be subject to an adjustment for that license tax assessed.

~~(c)~~ (e) Whenever a license tax is so computed upon estimated gross receipts of greater than $2,000,000, any erroneous estimate shall be subject to correction. In the case of an underestimate, the director shall assess the person with any additional license tax found to be due after the close of the current license year, and, in case of an overestimate, the licensee shall be entitled to a credit upon his license taxes payable the following year.

(f) The provisions of this section shall not apply to the following business tax categories: renting by owners of dwelling units or commercial establishments, contractors, wholesale merchants, amusements, public utilities, and regulatory activities.

Section 9-1-42 Investigations generally; record-keeping; audit authority.

(a) The director may make investigations of the things and matters in this chapter laid to his charge, and shall have power to summon before him any person whom he believes may have knowledge or evidence touching upon the conduct of any business in the city or touching upon the possession or operation of any coin-operated machine in the city, and to require such person to answer under oath any question relating to the matters under investigation.

(b) Every person who is assessable with a license tax shall keep ~~accurate and correct~~ for the current and three prior years sufficient records ~~and books of accounts which reflect true tax liability for the current license year and the three previous license years. These records and books of accounts may be kept on either a cash or an accrual basis but the system of accounts shall be the same as that used for federal income taxes. These records and books of accounts shall be kept in such a manner so as~~ to enable the director to verify the correctness of the tax paid for the ~~current~~ license years assessable ~~and the three previous license years~~ and to enable the director 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 shall be open to inspection and examination by the director in order to allow the director to establish whether a particular receipt is directly attributable to the taxable privilege exercised within the city. ~~In the event that the director conducts an audit pursuant to his authority in section 58.1-3109 of the Code of Virginia (1950), the~~ The director shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there. In the event the records are maintained outside this jurisdiction, copies of the appropriate books and records shall be sent to the director's office upon demand.

Section 9-1-43 Administrative Appeals to the Director of Finance.

(a) Definitions. For purposes of this section:

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

"Appealable event" means an increase in the assessment of a 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.

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

"Jeopardize by delay" means a finding, based on specific facts, that a taxpayer desires to (i) depart quickly from the locality; (ii) remove his property therefrom; (iii) conceal himself or his property; 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.

~~(a)~~ (b) Filing and contents of administrative appeal. Any person assessed with a license tax as a result of an appealable event as defined in this section may~~, within 90 days from the date of such assessment, apply to~~ 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 director ~~for a correction of the assessment~~. The ~~application~~ appeal ~~shall~~ must be filed in good faith and ~~shall~~ sufficiently identify the ~~licensee~~ taxpayer, the tax periods covered by the challenged assessments, the amount in dispute, the remedy sought, each alleged error in the assessment, the grounds upon which the ~~licensee~~ taxpayer relies, and any other facts relevant to the ~~licensee's~~ taxpayer's contention. The director may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, an audit or further audit, or other evidence deemed necessary for a proper and equitable determination of the appeal ~~and may conduct an audit~~. The assessment placed at issue in the appeal shall be deemed prima facie correct. The director shall undertake a full review of the ~~licensee's~~ taxpayer's claims and~~, upon the conclusion of such review,~~ issue a written determination ~~on the appeal~~ to the taxpayer setting forth the ~~director's position~~ facts and arguments in support of his decision.

~~(b) Any licensee aggrieved by an audit conducted by the director may appeal the audit findings in the manner set forth in subsection (a). Any new or revised assessment resulting from an audit shall be accompanied by a written explanation of the licensee's right to apply for a correction of the assessment and of the specific procedure to be followed.~~

(c) Notice of right of appeal and procedures. Every assessment made by a director pursuant to an appealable event shall include or be accompanied by a written explanation of the taxpayer's right to file an administrative appeal and the specific procedures to be followed in the jurisdiction (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.

(d) Suspension of collection activity during appeal. Provided a timely and complete administrative appeal is filed, collection activity with respect to the amount in dispute shall be suspended until a final determination is issued by the director, unless (i) the director determines that collection would be jeopardized by delay as defined in this section; (ii) the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) the appeal is frivolous as defined in this section. Interest shall accrue in accordance with the provisions of Section 9-1-46, but no further penalty shall be imposed while collection action is suspended.

(e) Procedure in event of nondecision. Any taxpayer whose administrative appeal to the director pursuant to the provisions of this section has been pending for more than one year without the issuance of a final determination may, upon not less than 30 days' written notice to the director, elect to treat the appeal as denied and appeal the assessment to the State Tax Commissioner in accordance with the provisions of subdivision 6 of this subsection. The State 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 director was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the director to make his determination.

Section 9-1-43.1 Administrative Appeal to the State Tax Commissioner.

(a) Any person assessed with a local license tax as a result of a determination, upon an administrative appeal to the director pursuant to Section 9-1-43, that is adverse to the position asserted by the taxpayer in such appeal may appeal such assessment to the State Tax Commissioner within 90 days of the date of the determination by the director. The appeal shall be in such form as the State Tax Commissioner may prescribe and the taxpayer shall serve a copy of the appeal upon the director. The State Tax Commissioner shall permit the director to participate in the proceedings, and shall issue a determination to the taxpayer

within 90 days of receipt of the taxpayer's application, unless the taxpayer and the director are notified that a longer period will be required. The appeal shall proceed in the same manner as an application pursuant to Virginia Code § 58.1-1821 and amendment(s) thereto, and the State Tax Commissioner may issue an order correcting such assessment pursuant to Virginia Code § 58.1-1822 and any amendment(s) thereto.

(b) Suspension of collection activity during appeal. On receipt of a notice of intent to file an appeal to the State Tax Commissioner under subsection (a) of this section, collection activity with respect to the amount in dispute shall be suspended until a final determination is issued by the State Tax Commissioner, unless (i) the director determines that collection would be jeopardized by delay as defined in Section 9-1-43; (ii) the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) the appeal is frivolous as defined in Section 9-1-43. Interest shall accrue in accordance with the provisions of Section 9-1-46, but no further penalty shall be imposed while collection action is suspended. The requirement that collection activity be suspended shall cease unless an appeal pursuant to subsection (a) of this section is filed and served on the necessary parties within 30 days of the service of notice of intent to file such appeal.

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

(1) If the determination of the State Tax Commissioner sets forth a specific amount of tax due, the director shall issue a bill to the taxpayer for such amount due, together with interest accrued, within 30 days of the date of the determination of the State Tax Commissioner.

(2) If the determination of the State Tax Commissioner sets forth a specific amount of refund due, the director 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 State Tax Commissioner.

(3) If the determination of the State Tax Commissioner does not set forth a specific amount of tax due, or otherwise requires the director 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 director 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 State Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the State Tax Commissioner, whichever is later. The director shall issue a bill to the taxpayer for the amount due, together with interest accrued, within 30 days of the date of the new assessment.

(4) If the determination of the State Tax Commissioner does not set forth a specific amount of refund due, or otherwise requires the director 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 director 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 State Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the State Tax Commissioner, whichever is later. The director 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.

Section 9-1-43.2 Judicial Review of Determination of State Tax Commissioner.

(a) Judicial review. Following the issuance of a final determination of the State Tax Commissioner pursuant to Section 9-1-43.1, the director may apply to the circuit court for judicial review of the determination, or any part thereof, pursuant to Virginia Code § 58.1-3984 and any amendment(s) thereto. In any such proceeding for judicial review of a determination of the State Tax Commissioner, the burden shall be on the party challenging the determination of the State Tax Commissioner, or any part thereof, to show that the ruling of the State Tax Commissioner is erroneous with respect to the part challenged. Neither the State Tax Commissioner nor the Virginia Department of Taxation shall be made a party to an application to correct an assessment merely because the State Tax Commissioner has ruled on it.

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

(1) On receipt of a notice of intent to file an application for judicial review, pursuant to Virginia Code § 58.1-3984 and any amendment(s) thereto, of a determination of the State Tax Commissioner pursuant to Section 9-1-43.1, and upon payment of the amount of the tax that is not in dispute together with any penalty and interest then due with respect to such undisputed portion of the tax, the director shall further suspend collection activity while the court retains jurisdiction unless the court, upon

appropriate motion after notice and an opportunity to be heard, determines that (i) the taxpayer's application for judicial review is frivolous, as defined in Section 9-1-43; (ii) collection would be jeopardized by delay, as defined in Section 9-1-43; or (iii) suspension of collection would cause substantial economic hardship to the locality. For purposes of determining whether substantial economic hardship to the locality would arise from a suspension of collection activity, the court shall consider the cumulative effect of then-pending appeals filed within the locality by different taxpayers that allege common claims or theories of relief.

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

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

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

(5) The suspension of collection activity authorized by this subdivision shall not be applicable to any appeal of a local license tax that is initiated by the direct filing of an action pursuant to § 58.1-3984 and any amendment(s) thereto without prior exhaustion of the appeals provided by Sections 9-1-43 and 9-1-43.1.

(c) Suspension of payment of disputed amount of refund due upon city's notice of intent to initiate judicial review.

(1) Payment of any refund determined to be due pursuant to the determination of the State Tax Commissioner of an appeal pursuant to Section 9-1-43.1 shall be suspended if the city serves upon the taxpayer, within 60 days of the date of the determination of the State Tax Commissioner, a notice of intent to file an application for judicial review of the State Tax Commissioner's determination pursuant to § 58.1-3984 and any amendment(s) thereto and pays the amount of the refund not in dispute, including tax and accrued interest. Payment of such refund shall remain suspended while the court retains jurisdiction unless the court, upon

appropriate motion after notice and an opportunity to be heard, determines that the city's application for judicial review is frivolous, as defined in this section.

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

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

(d) Accrual of interest on unpaid amount of tax. Interest shall accrue in accordance with the provisions of Section 9-1-46, but no further penalty shall be imposed while collection action is suspended.

Section 9-1-44 Administrative rulings.

Any ~~licensee~~ taxpayer or authorized representative of a taxpayer may request a written ruling from the director regarding the application of the tax levied by this chapter to a specific situation. ~~A licensee~~ Any person requesting such a ruling ~~shall~~ must provide all ~~the~~ facts relevant ~~facts for~~ to the situation placed at issue and may present a rationale for the basis of an interpretation of the law most favorable to the ~~licensee~~ taxpayer. Any misrepresentation ~~by the licensee and any~~ 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 prospectively revoked or prospectively amended if (i) there is a ~~court decision or a change in the law or regulation~~ change in the law, a court decision, or the guidelines issued by the Virginia Department of Taxation upon which the ruling was based, or (ii) the director notifies the ~~licensee~~ taxpayer of a change in the policy or interpretation upon which the ruling was based. ~~A~~ 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 the ruling was in effect.

Section 2. That Section 9-1-78 of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Section 9-1-78 Wholesale merchants.

Every person who engages in or conducts the business of a wholesale merchant in, and who maintains a definite place of business in, the city shall pay for the privilege of doing so an annual license tax of $50 or, if the business' ~~annual gross receipts~~ purchases with situs in the city equal or exceed $100,000, $0.05 for each $100 of all the business' ~~gross receipts~~ purchases with such situs~~, whichever amount is greater~~.

Section 3. That Section 9-1-116 of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Section 9-1-116 Same–fees.

The fee for licenses issued pursuant to this article shall be ~~$30~~ $50 or twenty cents ($0.20) for each $100 of gross receipts from sales during the entire period of the distress merchandise sale, whichever is greater. The license may be renewed without fee under the conditions prescribed in section 9-1-121 of this code.

Section 4. That this ordinance shall become effective July 1, 2005.

WILLIAM D. EUILLE
Mayor

Introduction:	6/14/2005
First Reading:	6/14/2005
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