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## **CHAPTER 12. LICENSES.**

### **ARTICLE I. General Provisions.**

#### **§ 12-1. Purpose of chapter.**

The purpose of this chapter is to levy and provide for the assessment and collection of county license taxes on businesses, trades, professions, occupations and callings and upon the persons, firms and corporations engaged therein within the county, subject only to the limitations provided herein or imposed by general law. (Augusta County Code 1993, § 12-2)

State law reference--Virginia Code § 58.1-3703.

Editor's Note: On December 11, 1996, entire chapter 12 repealed and new chapter reenacted effective midnight, December 31, 1996.

#### **§ 12-2. License required.**

A. Whenever a license is required by this chapter and whenever the board of supervisors shall levy a license tax on any business, trade, profession, occupation, or calling, it shall be unlawful to engage in such business, trade, profession, occupation or calling without first obtaining the required license or paying the required license tax. Each day in which a person shall fail to comply with this section shall constitute a separate offense. (Augusta County Code 1993, § 12-3(A))

B. Any person who engages in a business without obtaining a required local license, or after being refused a license, shall not be relieved of the tax imposed by this chapter.

State law reference--Virginia Code § 58.1-3700.

#### **§ 12-3. Levying of license taxes.**

For each and every year beginning with January first of each year and ending December thirty-first following, until otherwise changed, there are hereby levied and there shall be collected the annual license taxes hereinafter set forth in this chapter, except as otherwise specifically provided in this chapter or by general law, on businesses, trades, professions, occupations and callings and upon the persons, firms and corporations engaged therein within the county, which license taxes shall be for the support of the county government, the payment of the county debt, and for other county purposes. (Augusta County Code 1993, § 12-4)

State law reference--Virginia Code § 58.1-3703.

**§ 12-4. License personal privilege.**

Every license issued under the provisions of this chapter shall be deemed to confer a personal privilege to transact, carry on or conduct the business, profession, trade, occupation or calling which may be the subject of the license, and shall not be exercised except by the persons licensed. (Augusta County Code 1993, § 12-5)

§§ 12-5 through 12-10 reserved.

**ARTICLE II. Uniform Ordinance Provisions.**

**§ 12-11. License requirement.**

A. Every person shall apply for a license for each business or profession when engaging in a business in this jurisdiction if:

1. the person has a definite place of business in this jurisdiction; or
2. there is no definite place of business anywhere and the person resides in this jurisdiction; or
3. there is no definite place of business in this jurisdiction but the person operates amusement machines or is classified as an itinerant merchant, peddler, carnival, circus, contractor subject to Virginia Code § 58.1-3715, or public service corporation.

B. A separate license shall be required for each definite place of business and for each business.

C. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied:

1. each business or profession is subject to licensure at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of this jurisdiction;
2. all of the businesses or professions are subject to the same tax rate, or, if subject to different tax rates, the licensee agrees to be taxed on all businesses and professions at the highest rate; and
3. the taxpayer agrees to supply such information as the assessor may require concerning the nature of the several businesses and their gross receipts.

State law reference--Virginia Code § 58.1-3703.1.

**§ 12-12. Due dates and penalties.**

A. Each person subject to a license tax shall apply for a license:

1. Prior to beginning business if he was not subject to licensure in this jurisdiction on or before January 1 of the license year, or
2. No later than January 31 of the license years 1997 through 2000, inclusive, if he had been issued a license for the preceding year, or
3. No later than March 1 of the license year 2001 and thereafter, if he had been issued a license for the preceding year.

B. The application shall be on forms prescribed by the assessing official.

C. The tax shall be paid with the application in the case of any license not based on gross receipts. If the tax is measured by the gross receipts of the business, the tax shall be paid on or before March 1 or thirty days after beginning business, whichever is later.

D. The assessing official may grant an extension of time in which to file an application for a license, for reasonable cause. The extension may be conditioned upon the timely payment of a reasonable estimate of the appropriate tax; the tax is then subject to adjustment to the correct tax at the end of the extension, together with interest from the due date until the date paid and, if the estimate submitted with the extension is found to be unreasonable under the circumstances, with a penalty of ten percent of the portion paid after the due date.

E. A penalty of ten percent of the tax may be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due date, subject, however to the following provisions:

1. Only the late filing penalty shall be imposed by the assessing official if both the application and payment are late; however, both penalties may be assessed if the assessing official determines that the taxpayer has a history of noncompliance.
2. In the case of an assessment of additional tax made by the assessing official, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax.
3. If any assessment of tax by the assessing official is not paid within thirty days, the treasurer or other collecting official may impose a ten percent late payment penalty.
4. If the failure to file or pay was not the fault of the taxpayer, the penalties shall not be imposed, or if imposed, shall be abated by the official who assessed them. In order to

demonstrate lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control as follows:

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

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

F. Interest shall be charged on the late payment of the tax from the due date until the date paid without regard to fault or other reason for the late payment, provided that:

1. Whenever an assessment of additional or omitted tax by the assessing official is found to be erroneous, all interest and penalty charged and collected on the amount of the assessment found to be erroneous shall be refunded together with interest on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the refund of any BPOL tax from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason. Interest on any refund shall be paid at the same rate charged under § 12-92 of this Chapter.

2. No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year. No interest shall be paid on a refund or charged on a late payment, provided the refund or the late payment is made not more than thirty days from the date of the payment that created the refund or the due date of the tax, whichever is later.

### **§ 12-13. Situs of gross receipts.**

A. General rule. Whenever the tax imposed by this ordinance is measured by gross receipts, the gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise of a privilege subject to licensure at a definite place of business within this jurisdiction. In the case of activities conducted outside of a definite place of business, such as during a visit to a customer location, the gross receipts shall be attributed to the definite place of business from which such activities are initiated, directed, or controlled. The situs of gross receipts for different classifications of business shall be attributed to one or more definite places of business or offices as follows:

1. The gross receipts of a contractor shall be attributed to the definite place of business at which his services are performed, or if his services are not performed at any definite place of business, then the definite place of business from which his services are directed or controlled, unless the contractor is subject to the provisions of Virginia Code § 58.1-3715;

2. The gross receipts of a retailer or wholesaler shall be attributed to the definite place of business at which sales solicitation activities occur, or if sales solicitation activities do not occur at any definite place of business, then the definite place of business from which sales solicitation activities are directed or controlled; however, a wholesaler or distribution house subject to a license tax measured by purchases shall determine the situs of its purchases by the definite place of business at which or from which deliveries of the purchased goods, wares and merchandise are made to customers. Any wholesaler who is subject to license tax in two or more localities and who is subject to multiple taxation because the localities use different measures, may apply to the Department of Taxation for a determination as to the proper measure of purchases and gross receipts subject to license tax in each locality;

3. The gross receipts of a business renting tangible personal property shall be attributed to the definite place of business from which the tangible personal property is rented or, if the property is not rented from any definite place of business, then to the definite place of business at which the rental of such property is managed; and

4. The gross receipts from the performance of services shall be attributed to the definite place of business at which the services are performed or, if not performed at any definite place of business, then to the definite place of business from which the services are directed or controlled.

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

C. Agreements.

1. The assessor may enter into agreements with any other political subdivision of Virginia concerning the manner in which gross receipts shall be apportioned among definite places of business. However, the sum of the gross receipts apportioned by the agreement shall not exceed the total gross receipts attributable to all of the definite places of business affected by the agreement.

2. Upon being notified by a taxpayer that its method of attributing gross receipts is fundamentally inconsistent with the method of one or more political subdivisions in which the taxpayer is licensed to engage in business and that the difference has, or is likely to, result in taxes on more than 100 percent of its gross receipts from all locations in the affected jurisdictions, the assessor shall make a good faith effort to reach an apportionment agreement with the other political subdivisions involved.

3. If an agreement cannot be reached, either the assessor or taxpayer may seek an advisory opinion from the Department of Taxation pursuant to Virginia Code § 58.1-3701; notice of the request shall be given to the other party.

4. Notwithstanding the provisions of Virginia Code § 58.1-3993, when a taxpayer has demonstrated to a court that two or more political subdivisions of Virginia have assessed taxes on gross receipts that may create a double assessment within the meaning of Virginia Code § 58.1-3986, the court shall enter such orders pending resolution of the litigation as may be necessary to ensure that the taxpayer is not required to pay multiple assessments even though it is not then known which assessment is correct and which is erroneous.

#### **§ 12-14. Limitations and extensions.**

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

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

C. The period for collecting any local license tax shall not expire prior to the period specified in Virginia Code § 58.1-3940, two years after the date of assessment if the period for assessment has been extended pursuant to this subdivision of the ordinance, two years after the final determination of an appeal for which collection has been stayed pursuant to §§ 12-15(B) or 12-15(D) of this chapter, or two years after the final decision in a court application pursuant to Virginia Code § 58.1-3984 or similar law for which collection has been stayed, whichever is later.

#### **§ 12-15. Appeals and rulings.**

##### **A. Appeals to Assessor.**

1. Any person assessed with a local license tax as a result of an audit may apply within ninety days from the date of such assessment to the assessor for a correction of the assessment. The application must be filed in good faith and sufficiently identify the taxpayer, audit period, 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.

2. The assessor may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, a further audit, or other evidence deemed necessary for a proper and equitable determination of the application. The assessment shall be deemed prima facie correct.

3. The assessor shall undertake a full review of the taxpayer's claims and issue a determination to the taxpayer setting forth its position. 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 jurisdiction (e.g., the name and address to which an application should be directed).

B. Provided a timely and complete application is made, collection activity shall be suspended until a final determination is issued by the assessor, unless the assessor determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of subdivision F of § 12-12 above, but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" includes a finding that the application is frivolous, or that a taxpayer desires to (i) depart quickly from the locality, (ii) remove his property therefrom, (iii) conceal himself or his property therein, or (iv) do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

C. Appeals to Tax Commissioner.

1. Any person assessed with a local license tax as a result of an audit may apply within ninety days of the determination by the assessing official on an application pursuant to subdivision A of this section to the Tax Commissioner for a correction of such assessment.

2. The Tax Commissioner shall issue a determination to the taxpayer within ninety days of receipt of the taxpayer's application, unless the taxpayer and the assessing official are notified that a longer period will be required. The application shall be treated as an application pursuant to Virginia Code § 58.1-1821, and the Tax Commissioner may issue an order correcting such assessment pursuant to Virginia Code § 58.1-1822.

3. Following such an order, either the taxpayer or the assessing official may apply to the appropriate circuit court pursuant to Virginia Code § 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.

D. On receipt of a notice of intent to file an appeal to the Tax Commissioner under subdivision C of this section, the assessing official shall further suspend collection activity until a final determination is issued by the Tax Commissioner, unless the assessor determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of subdivision F of § 12-12 above, but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" shall have the same meaning as set forth in subdivision B of this section.

E. Any taxpayer may request a written ruling regarding the application of a local license tax to a specific situation from the assessor. Any person requesting such a ruling must provide all the relevant facts for the situation and may present a rationale for the basis of an interpretation

of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if (i) there is a change in the law, a court decision, or the guidelines issued by the Department of Taxation upon which the ruling was based or (ii) the assessor notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.

#### **§ 12-16. Record-keeping and audits.**

A. Every person who is assessable with a local license tax shall keep sufficient records to enable the assessor to verify the correctness of the tax paid for the license years assessable and to enable the assessor to ascertain what is the correct amount of tax that was assessable for each of those years.

B. All such records, books of accounts and other information shall be open to inspection and examination by the assessor in order to allow the assessor to establish whether a particular receipt is directly attributable to the taxable privilege exercised within this jurisdiction.

C. The assessor shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there.

D. In the event the records are maintained outside this jurisdiction, copies of the appropriate books and records shall be sent to the assessor's office upon demand.

§§ 12-17 through 12-20 reserved.

### **ARTICLE III. Issuance of License.**

#### **§ 12-21. Procedure for obtaining license.**

A. The Commissioner of the Revenue shall furnish license application forms in triplicate, which forms shall be properly and fully executed by the applicant, and shall contain such information as may be required herein or by the Commissioner of the Revenue.

B. The Commissioner of the Revenue shall assess such applicant, or other person, firm or corporation of whom a license is required, with the license tax required by this chapter, and shall retain one copy of the license application form and furnish the applicant with two (2) copies of such form to be surrendered to the County Treasurer.

C. Upon payment of the required license tax to the County Treasurer, the Treasurer shall receipt such payment upon each of the copies of the license application form and return both copies to the Commissioner of the Revenue.

D. The Commissioner of the Revenue shall issue the applicant the copy indicating "Licensee's Copy" which shall be evidence that a license has been issued. The Commissioner may provide such further evidence of the issuance of the business license as the Commissioner may deem appropriate.

(Ord. 7/26/00)

Editor's Note: Subsection E imposing a license fee was repealed 12/09/98, effective upon enactment. No license fee shall be charged for the calendar year 1999 and thereafter.

State law reference--Virginia Code §§ 58.1-3703(A); 58.1-3916.

**§ 12-22. Information to be furnished by applicant for license.**

A. Every applicant for a license to conduct any business, trade, profession, occupation or calling within the county shall furnish the Commissioner of the Revenue, in writing, with the correct name and trade name, if any, of the applicant, the correct residence of the applicant, the nature of the business, trade, profession, occupation or calling to be pursued, and the place where it is to be pursued.

B. Where the license tax is based in whole or in part upon the volume of the business, trade, profession, occupation or calling within the county, the applicant shall furnish the Commissioner of the Revenue with the information required by article IV of this chapter. (Augusta County Code 1993, § 12-12)

**§ 12-23. Compliance with zoning regulations.**

A. In the case of a person, firm or corporation beginning a business, trade, profession, occupation or calling within the county, the applicant shall furnish the Commissioner of the Revenue with a certificate of proper zoning issued by the Zoning Administrator of the county.

B. All licenses issued shall be subject to verification to ascertain compliance with chapter 25 of this code. Failure to comply shall be just cause for immediate revocation of the license by the Commissioner of the Revenue. (Augusta County Code 1993, § 12-13)

**§ 12-24. Evidence of payment of taxes required.**

No business license under this chapter shall be issued until the applicant has produced satisfactory evidence that all delinquent business license, personal property, meals and transient occupancy taxes which have been properly assessed against the applicant by the county and are owed by the business to the county have been paid. (Ord. 10/27/99)

State law reference--Virginia Code § 58.1-3700.

§§ 12-25 through 12-40 reserved.

## **ARTICLE IV. License Taxes Measured by Volume.**

### **§ 12-41. License tax not required on volume not exceeding one hundred thousand dollars.**

No license tax measured by volume shall be required to be paid by any person, firm or corporation whose volume shall be one hundred thousand dollars or less, but such person, firm or corporation shall be required to report such volume to the Commissioner of the Revenue, who will issue a certificate of exemption to such person, firm or corporation. (Augusta County Code 1993, § 12-22; Ord. 5/1/96)

State law reference--Virginia Code § 58.1-3706(A).

### **§ 12-42. Additional information required with application.**

A. Where the license tax is based in whole or in part upon the volume of the business, trade, profession, occupation or calling within the county, the applicant shall furnish the Commissioner of the Revenue with a statement, in writing, of the amount of such gross receipts or other base which is related to the amount of business done during the preceding license year, except in the case of a person, firm or corporation beginning a business, trade, profession, occupation or calling. (Augusta County Code 1993, § 12-12(B))

B. Where the license tax is based in whole or in part upon the volume of a person, firm or corporation beginning a business, trade, profession, occupation or calling within the county or otherwise did not have a full year of operation during the preceding license year, the applicant shall furnish the Commissioner of the Revenue with an estimate of the amount of gross receipts the person, firm or corporation will receive or other base which is related to the amount of business the person, firm or corporation will do between the date of beginning business and the date of ending business in the then current license year. (Augusta County Code 1993, § 12-12(C))

C. The calculation of gross receipts shall be on either a cash or accrual basis determined by the accounting system of the taxpayer, provided that the basis used must coincide with the system of accounts used by the taxpayer and the method employed by the taxpayer for federal and state income tax purposes. (Augusta County Code 1993, § 12-1(B)(6))

D. If any licensee shall fail to maintain the records required in this section, regularly supported by customary vouchers, the Commissioner of the Revenue is hereby authorized and directed to estimate the licensee's volume on the basis of the best evidence he can obtain, and the Commissioner of the Revenue shall make an assessment on the basis of such estimate. (Augusta County Code 1993, § 12-21(E))

### **§ 12-43. Assessment when estimated volume is erroneous.**

A. Whenever a license tax is computed upon estimated gross receipts or other estimated base which is related to the amount of business done any erroneous estimate shall be subject to correction, and the Commissioner of the Revenue shall assess the licensee with any additional license tax found to be due after the end of that license year, and shall at the same time correct

the estimate for the then current license year, until a full year of operation shall have been completed, and in the case of an over estimate the licensee shall be entitled to a credit upon the license tax payable the following year. (Augusta County Code 1993, § 12-23)

B. Taxes found to be overpaid. The Commissioner of the Revenue is empowered to certify to the Treasurer any instances of erroneous assessment. Upon receipt of such certificate approved by the board of supervisors, the Treasurer is directed to make a refund based upon the certification of the Commissioner of the Revenue.

If any person, firm or corporation seeking refund is indebted to the county or any department or office thereof, or is indebted to any state constitutional office of the county for a local levy, the refund, or so much thereof as is necessary, shall first be applied to such indebtedness. (Augusta County Code 1993, § 12-26(B))

C. Taxes found to be underpaid. If the Commissioner of the Revenue ascertains that any person, firm or corporation has been assessed with a license tax levied under the provisions of this chapter for any license tax year of the three (3) license tax years last past, or for the then current license tax year, but upon a correct audit and the computation of the license tax the assessment thereof should be in an increased amount, and the assessment of the license tax at the lesser amount was not due to fraudulent intent or to evade taxes, then the Commissioner of the Revenue shall assess the taxpayer with the additional license tax found to be due, without penalty unless penalty had been imposed on the original license tax, and shall furnish written notice thereof to the taxpayer and at the same time shall transmit a copy of the assessment notice to the Treasurer for collection. If the assessment of the additional license tax is not paid to the Treasurer within fifteen (15) days after written notice to the taxpayer of such additional assessment, penalty at the rate of ten (10) percent per annum shall accrue from the date of the notice until payment, and the Treasurer shall collect such penalty along with the tax and in the same manner as the tax may be collected. Any overpayment of license tax imposed under the terms of this chapter shall be credited to the amount of license tax due the following year or shall be refunded in case the licensee does not engage in a business, profession, trade or occupation subject to license by the county the following year. (Augusta County Code 1993, § 12-26(C))

#### **§ 12-44. Payment of license tax by employer.**

Whenever a license tax measured by volume is paid by a person, firm or corporation employing persons who would otherwise be liable for a license tax, the payment by the employer shall be deemed to discharge the license tax liability of the officers and employees of such person, firm or corporation insofar as the business of such person, firm or corporation is concerned. (Augusta County Code 1993, § 12-24)

#### **§ 12-45. Proration of license taxes; licensee ceasing business.**

In the event a person, firm or corporation ceases to engage in a business, trade, profession, occupation or calling within the county during a year for which a license tax based on volume has already been paid, the licensee shall be entitled upon application to the Commissioner of the Revenue to a refund for that portion of the license tax already paid, prorated on a monthly basis so as to ensure that the license privilege is taxed only for that fraction of the

year during which it is exercised within the county. The Treasurer may elect to remit any refunds in the ensuing fiscal year and may offset against such refund any amount of past due taxes owed by the licensee. The county shall not refund any part of a flat fee or minimum flat tax. The license privilege shall be deemed to be exercised until the licensee notifies the Commissioner of the Revenue of its cessation. (Augusta County Code 1993, § 12-25)

State law reference--Virginia Code § 58.1-3710.

**§ 12-46. Classes of enterprises.**

A. All persons, firms or corporations engaged in a business, trade, profession, occupation or calling in the county, unless otherwise provided in this chapter or by general law, shall obtain a business license and pay a license tax measured by volume in accordance with the rates set forth in this article.

B. Each such business, trade, profession, occupation or calling subject to a license tax measured by volume shall be designated by the Commissioner of the Revenue as one of the following classes of enterprise, as he may deem appropriate:

1. Contractors and persons constructing for their own account for sale.
2. Retail sales.
3. Wholesale sales.
4. Direct sellers.
5. Financial, real estate and professional services.
6. Repair, personal and business services.
7. Certain public service corporations.
8. Other businesses and occupations.

C. Each business, trade, profession, occupation or calling subjected to a license tax under article V of this chapter shall be exempt from license taxes under this article unless otherwise provided in article V.

D. Nothing contained in this chapter shall be construed as imposing any license tax on any business, trade, profession, occupation or calling that the county is prohibited by federal or state law from imposing. (Augusta County Code 1993, § 12-31)

E. The Commissioner of the Revenue may seek the aid of guidelines and opinions promulgated by the Virginia Department of Taxation for the purpose of defining and explaining the categories listed in § 58.1-3706(A) of the Code of Virginia (1950), as amended. (Augusta County Code 1993, § 12-1(C))

State law reference--Virginia Code § 58.1-3706.

**§ 12-47. Contractors.**

A. The license tax for contractors, and persons, firms or corporations constructing for their own account for sale, shall be twenty-five dollars (\$25.00) or sixteen cents per \$100 of gross receipts, during the preceding fiscal or calendar year, whichever is higher. The term "contractor", for purposes of this chapter, is defined in § 58.1-3714(B) of the Code of Virginia (1950), as amended.

B. Any contractor or person, firm or corporation constructing for their own account for sale, who shall have paid a local license tax required by the city, town or another county in which such person's, firm's or corporation's principal office is located in this state shall not be required to obtain a license or pay a license tax unless:

(1) one or more branch offices are located within the county; or

(2) the amount of business done by the person, firm or corporation exceeds the sum of twenty-five thousand dollars (\$25,000.00) in any year.

C. Any contractor or person, firm or corporation constructing for their own account for sale, from a place of business outside this state shall be liable for the tax imposed by this section on the gross receipts from activities conducted in this county.

D. In addition to the information required by article II of this chapter, any person, firm or corporation applying for a license for contracting, or constructing for their own account for sale, or undertaking a contract let by a board, authority, commission, department or offices of the county, shall, upon making application for such permit, or upon the award of such contract, furnish to the Commissioner of the Revenue a list of the subcontractors and sub-subcontractors, and if any or all of such subcontracts have not been closed or awarded at the time of applying for such permit or award of such contract, the person, firm or corporation shall furnish such list in writing immediately upon awarding the subcontract or contracts, and the person, firm or corporation shall not allow the work under any subcontract to proceed until the subcontractor shall have exhibited its county license to do such business in the county or a certificate of exemption for the current year. (Augusta County Code 1993, § 12-32)

State law reference--Virginia Code §§ 58.1-3706, 58.1-3714 and 58.1-3715.

**§ 12-48. Retail sales.**

Unless otherwise provided herein or by general law, the license tax on persons, firms and corporations conducting retail sales in the county shall be twenty dollars (\$20.00) or 20 cents for each \$100 of gross receipts during the preceding fiscal or calendar year, whichever is higher. The term "retail sale," for purposes of this chapter, is defined in § 58.1-602 of the Code of Virginia (1950), as amended. (Augusta County Code 1993, § 12-33)

State law reference--Virginia Code § 58.1-3706.

**§ 12-49. Wholesale sales.**

Unless otherwise provided herein or by general law, the license tax on persons, firms and corporations engaging in any wholesale merchant's occupation, business or trade with a definite place of business or store in the county shall be 5 cents for each \$100 of purchases. For purposes of this section only, the term "purchases" shall mean gross receipts from the business during the preceding fiscal or calendar year. (Augusta County Code 1993, § 12-34)

State law reference--Virginia Code § 58.1-3716.

**§ 12-50. Direct Sellers.**

A. Persons, firms and corporations engaged in the business of a direct seller shall pay no license tax unless the total sales of such seller exceeded four thousand dollars (\$4,000) during the preceding fiscal or calendar year.

B. If the sales of a person, firm or corporation engaged in the business of a direct seller exceeded four thousand dollars (\$4,000) during the preceding fiscal or calendar year shall be 20 cents per \$100 of retail sales or 5 cents per \$100 of wholesale sales, whichever is applicable.

C. The term, "direct seller," for purposes of this chapter, is defined in § 58.1-3719.1 of the Code of Virginia (1950), as amended. (Augusta County Code 1993, § 12-35)

State law reference--Virginia Code § 58.1-3719.1.

**§ 12-51. Financial, real estate and professional services.**

A. Unless otherwise provided herein or by general law, the license tax on persons, firms and corporations providing financial, real estate or professional services in the county shall be thirty dollars or thirty cents for each \$100 of gross receipts during the preceding fiscal or calendar year, whichever is higher.

**B. Renting by owner of houses, apartments or commercial establishments.**

1. Every person who, as principal, shall engage in the business of renting houses, apartments or commercial property in the county shall pay for the privilege of doing business an annual license tax of twenty cents (\$0.20) on each one hundred dollars (\$100.00) of gross receipts from the rental of all commercial establishments, apartments units or dwelling units during the preceding fiscal or calendar year. The minimum annual license tax shall be twenty dollars (\$20.00).

2. "The business of renting houses and apartments," as used in this section, shall be construed to mean the rental of a building or portion thereof designed exclusively for residential occupancy, including one-family, two-family and multifamily dwellings, but not including hotels, boardinghouses and rooming houses.

3. The words "dwelling unit" are defined to mean one or more rooms in a dwelling house or apartment designed for occupancy by one family for living purposes and having cooking facilities. (Augusta County Code 1993, § 12-36)

(Ord. 2/11/15)

State law reference--Virginia Code §§ 58.1-3703(C)(7) and 58.1-3706.

**§ 12-52. Repair, personal and business services.**

A. Unless otherwise provided herein or by general law, the license tax on persons, firms and corporations providing repair, personal or business services in the county shall be thirty dollars (\$30.00) or thirty cents for each \$100 of gross receipts during the preceding fiscal or calendar year, whichever is higher.

Editor's Note: Subsections B, C and D, imposing special license tax rates on "campsites," "tourist cabins, hotels, motels and motor courts," and "wall signs and billboards," were repealed 12/09/98. Such businesses shall pay the same BPOL tax rates as similarly classified businesses.

State law reference--Virginia Code § 58.1-3706.

**§ 12-53. Certain public service corporations.**

A. Telephone and telegraph companies. Telephone and telegraph companies shall pay a license tax at the rate of one-half of one percent of the gross receipts of such company accruing from sales to the ultimate consumer in the county. However, charges for long distance telephone calls shall not be included in gross receipts for purposes of license taxation.

B. Heat, light and power companies. Heat, light and power companies shall pay a license tax at the rate of one-half of one percent of the gross receipts of such company accruing from sales to the ultimate consumer in the county.

C. Gross receipts defined. For purposes of this section, the term "gross receipts" shall mean the gross receipts accruing from sales to the ultimate consumer within the county included in the total gross receipts utilized by the State Corporation Commission in making assessments for Commonwealth license taxes.

D. When gross receipts ascertained; basis of tax. For the purpose of this section, gross receipts shall be ascertained as of the thirty-first day of December of each year and the tax for the current calendar year shall be based on receipts for the previous calendar year.

E. Annual Report. Every company which must pay a license tax under this section shall report annually on or before April 15, to the Commissioner of the Revenue its total gross receipts for the twelve months ending December 31, next preceding.

F. License taxes of companies commencing business.

1. Any company which must pay a license tax under this section and which begins business on or after the beginning of the tax year shall pay the license tax, the measure of which shall be an estimate of the gross receipts of such company for the year or for the part of the year in which it conducts business. Such estimate shall be reported to the Commissioner of the Revenue within thirty days after beginning business and the license tax measured thereby and assessed by the Commissioner of the Revenue shall be paid to the Treasurer within thirty days after such assessment is made or by June 1 of the year if such assessment is made more than thirty days prior to June 1.

2. Any company subject to the provisions of subsection 1 shall, for the immediately following tax year, pay the license tax measured by an estimate of the gross receipts for the year beginning January 1 of the year following the year in which it began business. Such estimate of gross receipts shall be reported to the Commissioner of the Revenue on or before April 15 of the tax year.

G. Due Date. The tax assessed under this section shall be due and payable to the County Treasurer on or before the first day of June following the date on which the tax is assessed.

H. Penalty and interest on delinquencies. Any person failing to pay the tax levied by this section within the prescribed time shall incur a penalty and interest thereon at a rate equal to the penalty and interest incurred upon the failure to pay real estate taxes when due in the County. (Augusta County Code 1993, § 12-38)

**§ 12-54. Other businesses and occupations.**

The license tax on persons, firms and corporations conducting all other businesses and occupations not specifically listed or excepted in this chapter or by general law shall be thirty dollars or thirty cents for each \$100 of gross receipts during the preceding fiscal or calendar year, whichever is higher. (Augusta County Code 1993, § 12-39)

State law reference--Virginia Code § 58.1-3706.

§§ 12-55 through 12-60 reserved.

**ARTICLE V. License Taxes Measured Other Than By Volume.**

**§ 12-61. Peddlers.**

A. Unless otherwise provided herein or by general law, the license tax on persons, firms or corporations engaged in the business of peddler shall be in accordance with the following schedule. For purposes of this chapter, the term "peddler" is defined in § 58.1-3717(A) of the Code of Virginia (1950), as amended.

1. Peddlers who travel on foot - \$250.00.

2. Peddlers of ice, wood or coal, not produced by them but purchased for resale - \$25.00 for each vehicle used in such peddling.

3. Peddlers of lemonade or like beverages, ice cream, nuts, popcorn, meat, milk, butter, eggs, poultry, fish, oysters, game, vegetables, fruits, sandwiches and soups or other family supplies of a perishable nature not grown or produced by them - \$37.50 for each vehicle used in peddling.

4. Peddlers of other family supplies of a perishable nature not grown or produced by them and groceries generally including such articles as are customarily sold in grocery stores, other than alcoholic beverages - \$150.00 for each vehicle used in such peddling.

5. All other peddlers not otherwise exempted - \$500.00.

B. Every vehicle used in peddling for which a license is required shall display such metal identification tag as may be issued by the Commissioner of the Revenue on the rear of the vehicle in a conspicuous place.

C. Every vehicle used in peddling, whether or not a license is required, shall have conspicuously displayed thereon the name and address of the peddler using the same.

D. This section shall not apply to peddlers at wholesale whose license tax shall be the same as the rate for wholesale merchants selling similar goods, wares or merchandise in the county at one definite place of business, as set forth in article IV of this chapter, but shall be no more than \$100.00 per year. (Augusta County Code 1993, § 12-41)

State law reference--Virginia Code §§ 58.1-3717 through 58.1-3719.

### **§ 12-62. Itinerant merchants.**

A. Unless otherwise provided herein or by general law, the license tax on persons, firms or corporations engaged in the business of itinerant merchant shall be twenty-five dollars (\$25.00) per week, with no prorations for partial weeks, not to exceed a total tax for any one calendar year of five hundred dollars (\$500.00). For purposes of this chapter, the term "itinerant merchant" is defined in § 58.1-3717(B) of the Code of Virginia (1950), as amended. (Ord. 12/11/68; Ord. 4/23/85; Code 1969, § 10-35)

B. The promoter or sponsor of a show or other gathering of itinerant merchants shall make satisfactory arrangements with the Commissioner of the Revenue in advance of the show or other gathering for the payment of the license fees imposed by this section. (Augusta County Code 1993, § 12-42)

State law reference--Virginia Code § 58.1-3717.

### **§ 12-63. Amusement operators.**

A. The license tax on every person, firm or corporation engaged in the business of amusement operator in the county shall be two hundred dollars (\$200.00) for the operation of 10 or more coin-operated amusement machines in the county.

B. The license tax on every person, firm or corporation engaged in the business of amusement operator in the county shall be twenty dollars (\$20.00) per amusement machine operated for the operation of less than 10 coin-operated amusement machines in the county.

C. In addition, every person, firm or corporation engaged in the business of amusement operator in the county shall pay the license tax required of those engaged in retail sales by § 12-48 of this chapter.

D. For purposes of this chapter, the term "amusement operator" is defined in § 58.1-3720 of the Code of Virginia (1950), as amended.

E. Every person, firm or corporation in the business of selling merchandise or services from coin-operated machines and who is not an "amusement operator" as defined by § 58.1-3720 of the Code of Virginia (1950), as amended, shall pay the license tax required of those engaged in retail sales by article IV of this chapter.

F. In addition to other penalties authorized by law, any person, firm or corporation providing any such coin machines or other devices and failing to procure business license, shall be subject to the forfeiture to the county of such coin machines or other devices. (Augusta County Code 1993, § 12-43)

State law reference--Virginia Code §§ 58.1-3720 through 58.1-3723.

### **§ 12-64. Bondsmen.**

A. Every person, firm or corporation who shall for compensation, enter into any bond or bonds for others, whether as principal or surety, shall obtain a license, the tax on which shall be one hundred fifty dollars (\$150.00); and no such professional bondsman or his agent shall enter into any such bond or bonds in this county until he shall have obtained such license.

B. With the exception of any bondsman or his agent who has heretofore obtained a certificate and license under this section and whose certificate, license and right to act as a bondsman continues to remain in full force and effect, no such license shall be issued by the Commissioner of the Revenue unless and until the applicant shall have first obtained a certificate from the Circuit Court of Augusta County, Virginia, as provided in article 4 of chapter 9 of title 19.2 of the Code of Virginia (1950), as amended.

C. In addition to other penalties authorized by law, any person, firm or corporation in the business of bondsman shall be subject to the revocation of licenses for failure to comply with the terms of this chapter. (Augusta County Code 1993, § 12-44)

State law reference--Virginia Code § 58.1-3724.

**§ 12-65. Fortune tellers, clairvoyants and practitioners of palmistry.**

A. The license tax on persons, firms or corporations engaged in the business of fortune teller in the county shall be one thousand dollars (\$1,000.00) per year. The term "fortune teller," for purposes of this chapter, is defined in § 58.1-3726 of the Code of Virginia (1950), as amended.

B. Notwithstanding any other provision of law, any person, firm or corporation who engages in the business of fortune teller without the license required by this chapter shall be guilty of a Class 3 misdemeanor. (Augusta County Code 1993, § 12-45)

State law reference--Virginia Code § 58.1-3726.

**§ 12-66. Photographers with no regularly established place of business in the state.**

The license tax on persons, firms or corporations engaged in the business of photography in the county with no regularly established place of business in the Commonwealth shall be thirty dollars (\$30.00) per year. The term, "photographer," for purposes of this section only, is defined in § 58.1-3727 of the Code of Virginia (1950), as amended. (Augusta County Code 1993, § 12-46)

State law reference--Virginia Code § 58.1-3727.

**§ 12-67. Carnivals, circuses, speedways.**

A. Unless otherwise provided herein or by general law, the license tax on persons, firms and corporations operating carnivals, circuses or speedways in the county shall in accordance with the following schedule. For purposes of this chapter, the term "carnival" is defined in § 58.1-3728 of the Code of Virginia (1950), as amended.

1. Speedways - \$20.00 on each performance.
2. Dog, pony or similar animal show - \$15.00 on each day of performance or exhibition.
3. Circus, circus and menageries, wild west or similar shows - \$75.00 on each day of performance or exhibition.
4. Amusements consisting of ferris wheel, roller coaster, merry-go-round, or other riding devices, and riding devices only - \$20.00 per day where the number of devices does not exceed two (2) and \$10.00 per day for each additional riding device over two (2).
5. All other carnivals, not otherwise exempt - \$150.00 per day of performance or exhibition.

6. Each side show, curiosity show or similar show, exhibiting on the same or continuous lots with a circus, carnival or other show and owned by a person, firm or corporation other than the owner of the circus, carnival or other show - \$25.00 per day of performance or exhibition.

B. No license tax for the privilege of selling soft drinks, confections, foods, souvenirs and novelties on the grounds on which shows are exhibited shall be required in addition to the license taxes enumerated above.

C. No license tax shall apply to circuses, carnivals or shows inside the grounds of any agricultural fair in the county.

D. The authorities of the county, including the sheriff, his deputies and all police officers of the county, shall not allow any performance or exhibition for which a license is required under this section to open until such license is exhibited to them.

E. Notwithstanding any other provision of law, any person, firm or corporation which exhibits or gives a performance or exhibition of any carnival, circus or other show without the license required by this section shall be guilty of a misdemeanor and fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for each offense. (Augusta County Code 1993, § 12-47)

State law reference--Virginia Code § 58.1-3728.

#### **§ 12-68. Savings and loan associations.**

Every savings and loan association having its main office in the county shall obtain a license and pay a license tax thereon at the rate of fifty dollars (\$50.00) per year. No license or license tax shall be required of any savings and loan association having its main office outside the county. (Augusta County Code 1993, § 12-48)

State law reference--Virginia Code § 58.1-3730.

#### **§ 12-69. Industrial loan associations and agricultural credit associations.**

Every industrial loan association and agricultural credit association with an office in the county shall obtain a license and pay a license tax thereon at the rate of five hundred dollars (\$500.00) per year. No other license or license tax shall be required of any industrial loan association or agricultural credit association in the county. (Augusta County Code 1993, § 12-49)

State law reference--Virginia Code § 58.1-3730.1.

Sections 12-70 through 12-80 reserved.

## **ARTICLE VI. Alcoholic Beverages.**

### **§ 12-81. Local license required.**

In addition to applicable state licenses, the county shall issue licenses, and charge and collect license taxes therefor, to persons licensed by the Virginia Alcoholic Beverage Control Board to manufacture, bottle or sell alcoholic beverages within the county. The license taxes shall be charged and collected with respect to each such state licensee as follows:

A. For each distiller's license, \$1,000 per annum; except that no license shall be required for any person who shall manufacture not more than 5,000 gallons of alcohol or spirits or both during such license year.

B. For each winery or farm winery license, \$50 per annum. (Ord. 8/25/10)

C. For each brewery license if no more than 500 barrels are manufactured during the year in which the license is granted, \$250.

D. For each brewery license if more than 500 barrels are manufactured during the year in which the license is granted, \$1,000 per annum.

E. For each bottler's license, \$500 per annum.

F. For each retail on-premises wine and beer license for a hotel, restaurant or club; and for each retail off-premises wine and beer license, including each specialty shop and convenience grocery store license, \$37.50 per annum.

G. For each retail on-premises beer license for a hotel, restaurant or club and for each retail off-premises beer license, \$25 per annum.

H. Gourmet Brewing Shop License, \$150.

(Ord. 2/11/15)

State law reference--Virginia Code §§ 4.1-205 and 4.1-233.

### **§ 12-82. Merchants' and restaurants' license taxes.**

A. When assessing wholesale merchants' license taxes measured by purchases, retail merchants' license taxes measured by sales, and restaurant license taxes measured by sales, the Commissioner of the Revenue shall include alcoholic beverages in the base for measuring such license taxes the same as if the alcoholic beverages were nonalcoholic.

B. The alcoholic beverage license required by this article shall not be construed as exempting any licensee from any merchants' or restaurant tax. Such merchants' and restaurant license taxes shall be in addition to the alcoholic beverage license taxes imposed by this article. (Augusta County Code 1993, § 12-62)

**§ 12-83. Persons holding a mixed beverage restaurant and caterer's license.**

Persons holding mixed beverage restaurant and caterers' licenses issued by the Virginia Alcoholic Beverage Control Commission for establishments located within the County of Augusta, Virginia, shall pay a license tax, in addition to all other taxes imposed, for the privilege of doing business in the county on the following basis and at the following rates:

A. Persons operating restaurants, including restaurants located on premises of and operated by hotels and motels:

1. Two hundred dollars (\$200.00) per annum for each restaurant with a seating capacity at tables for up to one hundred (100) persons;
2. Three hundred fifty dollars (\$350.00) per annum for each restaurant with a seating capacity at tables for more than one hundred (100) but not more than one hundred fifty (150) persons;
3. Five hundred dollars (\$500.00) per annum for each restaurant with a seating capacity at tables for more than one hundred fifty (150) persons; and
4. Five hundred dollars (\$500.00) per annum for each caterer.

B. A private, nonprofit club operating a restaurant located on the premises of such club, three hundred fifty dollars (\$350.00) per annum. (Augusta County Code 1993 § 12-63)

State law reference--Virginia Code § 4.1-233.

**§ 12-84. Same; when payable; proration of tax; refunds.**

A. All license taxes imposed by this article shall become due and payable on or before the day license taxes are due under § 12-12(C) of this chapter in the case of licenses not based on gross receipts. The annual license tax year shall begin with January 1 of each year and end the following December 31.

B. Except for license taxes imposed in § 12-81, the tax imposed by this article on each such license shall be subject to proration to the following extent: If the license is issued in the second quarter of any year, the tax shall be decreased by one-fourth; if issued in the third quarter of any year, the tax shall be decreased by one-half; and if issued in the fourth quarter of any year, the tax shall be decreased by three-fourths. License taxes imposed in § 12-81 shall not be prorated.

C. No refunds of license taxes imposed by this article based on licensee going out of business or on loss of state license shall be made. (Augusta County Code 1993, § 12-64)

(Ord. 2/11/15)

§§ 12-85 through 12-90 reserved.

## **ARTICLE VII. Enforcement.**

### **§ 12-91. Display of form, tag, button or sign issued in evidence of licenses.**

A. Every person, firm or corporation required to obtain a license under the provisions of this chapter shall keep the form, tag, button or sign issued in evidence thereof or prescribed by the Commissioner of the Revenue in a convenient and conspicuous place, and whenever required to do so, shall exhibit the same to any authorized enforcement officer of the county.

B. Whenever a metal identification tag is issued by the Commissioner of the Revenue in evidence of payment of a license under any of the provisions of this chapter, such metal tag shall be displayed by the licensee only on the rear of the vehicle in a conspicuous place. (Augusta County Code 1993, § 12-71)

### **§ 12-92. Interest on delinquent license taxes.**

A. Interest shall commence on the first day following the day such taxes are due at the rate of ten percent (10%) per year.

B. For the second and subsequent years of delinquency, the rate of interest shall be the rate of interest established pursuant to § 6621 of the Internal Revenue Code of 1954, or ten percent (10%) annually, whichever is greater. (Augusta County Code 1993, § 12-74)

State law reference--Virginia Code § 58.1-3916.

### **§ 12-93. Revocation of licenses.**

Any license granted under this chapter may be revoked by the Commissioner of the Revenue upon the failure of any licensee to comply with the terms of this chapter and there shall be no refund. (Augusta County Code 1993, § 12-75)

### **§ 12-94. Powers of the Commissioner of the Revenue.**

In the enforcement of the provisions of this chapter, the Commissioner of the Revenue, in addition to the powers herein specifically granted, shall have all and the same enforcement authority with respect to licenses that state law confers upon Commissioners of the Revenue generally with respect to taxes, including, but not limited to, the following:

- A. to require access to books of account or other papers and records;
- B. to require information to be furnished relating to the requirement of a license or assessment of a license tax;
- C. to summon any person, by certified mail, return receipt requested, or otherwise, to appear before him at his office at a time to be specified in such summons and to answer under

oath questions pertaining to the requirement of a license or the assessment of a license tax upon any person, firm or corporation;

D. to require the exhibit to the Commissioner of Revenue any real or personal property which may relate to the requirement of a license or assessment of a license tax upon any person, firm or corporation; and

E. to proceed by warrant to enforce compliance with the provisions of this chapter. (Augusta County Code 1993, § 12-76)

State law reference--Virginia Code §S 58.1-3100 *et seq.*

### **§ 12-95. Effect of advertising.**

When any person, firm or corporation shall, by use of signs, circulars, cards, radios or use of newspapers or any other means, advertise any business which falls within the terms of this article, it shall be considered prima facie evidence of his liability under this article and the person, firm or corporation shall be required to take out a license for such business. (Augusta County Code 1993, § 12-77)

### **§ 12-96. Payment of administrative costs.**

A. A fee is imposed on delinquent taxpayers to cover the administrative costs and reasonable attorney's or collection agency's fees which shall not exceed twenty percent of the delinquent tax bill associated with the collection of delinquent taxes.

B. Such administrative costs shall be in addition to all penalties and interest, and shall not exceed twenty dollars for taxes collected subsequent to the filing of a warrant or other appropriate legal document but prior to judgment, and twenty-five dollars for taxes collected subsequent to judgment.

C. Attorney's fees shall be added only if such delinquency is collected by action at law or suit in equity.

State law reference--Virginia Code § 58.1-3958.