

## Town of Windsor

### Memorandum

August 9, 2016

**TO:** The Honorable Mayor and Town Council

**FROM:** Michael Stallings, Town Manager *MS*

**SUBJECT:** Joint Water Taskforce

As you may know, Isle of Wight County is establishing a joint water taskforce to be made up of Isle of Wight County, the Town of Smithfield, and the Town of Windsor. Both Towns will appoint an elected official to serve on this taskforce in addition to the other members of the taskforce.

Council needs to select a representative to serve on this taskforce. I will forward the name to Isle of Wight County so that the Councilmember can be notified of meetings when they are held.

This is for Council's discussion.

## Town of Windsor

### Memorandum

August 9, 2016

**TO:** The Honorable Mayor and Town Council

**FROM:** Michael Stallings, Town Manager *MS*

**SUBJECT:** Town Code Update

In accordance with the Town Code update schedule, I have completed my review of sections 73, 78, and 89 of the Town Code. The sections are attached with the recommended changes in red. Additions are underlined and deletions are struck through.

My recommended changes are as follows:

Section 73 – Delete sections 1-9 and 11 as these sections are either covered by State Code, Isle of Wight County Code, or internal Fire Department Policies and Procedures. Sections 10, and 12 will remain in place.

Section 78 – Delete entire section as it is covered by State Code and is not something that we are currently enforcing.

Section 89 – Made slight wording changes to help clarify the tax rates, and to bring the Code in line with current rates in our fee schedule.

If Council is agreeable to these changes, we will add them to the previous batch for advertisement at a future date.

This is for Council's discussion and direction.

## **Chapter 73. FIRE PROTECTION**

### **§ 73-1. Fire zones designated.**

An area for a radius of 75 yards at all points from a fire shall constitute and is hereby established as a fire zone.

### **§ 73-2. Entering fire zones restricted.**

No person, except firemen, police officers, fire police and those requested by the Fire Chief, or Acting Chief, to assist in extinguishing a fire, shall enter a fire zone during a fire without permission of the Fire Chief, Acting Chief, Town or fire police or some member of the fire company.

### **§ 73-3. Driving over fire hose.**

No person shall drive any vehicle, or cause the same to be driven or passed, over any fire hose when the hose is lying on the ground or upon any street, alleyway, or sidewalk, without permission of the Fire Chief, or Acting Fire Chief.

### **§ 73-4. Interference with fire equipment.**

Any unauthorized person who shall in any way interfere or tamper with or damage any fire equipment, hose or apparatus, or who shall interfere with or obstruct or hinder the use or movement of any fire equipment at or going to or returning from a fire or drill shall be deemed guilty of a misdemeanor.

### **§ 73-5. Interference with firemen prohibited.**

No person shall in any manner interfere with or obstruct any firemen in the performance of their duties during any fire or drill.

### **§ 73-6. Disobeying orders of Fire Chief at fire.**

Any person, at a fire, including members of the fire company, who shall fail, refuse or neglect to obey any order or request of the Fire Chief, or Acting Fire Chief, shall be deemed guilty of a misdemeanor.

### **§ 73-7. Disobeying orders of police or firemen at fires.**

Any person, other than members of the fire company, at or during a fire, who shall fail, refuse or neglect to obey any order or request given by the Town police, fire police or any member of the fire company authorized to give orders and act as policemen, shall be deemed guilty of a misdemeanor.

**§ 73-8. Entering burning or burned buildings.**

~~No person, other than firemen, shall enter a burning building without the permission of the Fire Chief, or Acting Fire Chief. No person, other than firemen, shall enter such building after the fire has been extinguished until authorized by the Fire Chief, or Acting Fire Chief.~~

**§ 73-9. False fire alarms prohibited.**

~~No person shall turn in or give any false alarm of fire.~~

**§ 73-10. Sale, use and possession of fireworks.**

No person shall, at any time, buy, sell, offer for sale, expose for sale, use, keep, possess, give away or in any manner dispose of, shoot, set off, ignite, or explode any firecracker, torpedo, skyrocket, Roman candle or any other substance or thing, of whatever size, form or construction, containing any explosive or inflammable compound or substance, and intended, or commonly known as "fireworks," except and other than sparklers and caps for pistols; provided that the Town Council may, by resolution, suspend the operation of this section for a specified period of time and permit any person to buy, sell, offer for sale, expose for sale, use, keep, possess, give away or in any manner dispose of, shoot, set off, ignite or explode any of such fireworks at such other time as the Town Council may designate. The period of suspension shall be specifically stated in the resolution. The Town Council may issue a written permit, upon application in writing, for the display of fireworks by fair associations, amusement parks or by any organization or group of individuals, under such terms and conditions as the Council may prescribe. After such permit has been issued, sales of fireworks may be made for use under such permit. The association, organization or group to which it is issued may make use of such fireworks under the terms and conditions of such permit. This section shall not be construed to prohibit the buying, selling, using, keeping, possessing or the disposition of or shooting, setting off, igniting or exploding of sparklers and caps for pistols as hereinbefore in this section excepted. This section shall have no application to the sale or use of materials or equipment, otherwise prohibited by this section, when such material or equipment is used or to be used by any person in the operation of any railroad train or other vehicle for the transportation of persons or property for signaling or other emergency use.

**§ 73-11. Transportation of explosives.**

~~No person shall carry, transport of any gunpowder, blasting powder, dynamite or other explosives on any vehicle, unless such explosives are secured in kegs, boxes or containers so that no part thereof can fall out or escape.~~

**§ 73-12. Open air burning.**

A. It shall be unlawful for any person to burn leaves in the open at any time within the Town, except on the property where the person resides between the hours of 9:00 a.m. and 7:00 p.m., provided that:

- (1) All embers of any such fire or burning shall be totally extinguished by 7:00 p.m.;

(2) The location of the fire or burning shall not be less than 50 feet from any occupied building or structure;

(3) At no time shall the fire or burning be unattended;

(4) Any person doing such burning shall take reasonable care to prevent the spread of any fire or burning to buildings, structures, or lands other than those owned or occupied by the person burning such leaves; and

(5) The burning is not otherwise prohibited by applicable state or county fire laws.

B. Nothing in this section shall be construed to prevent, prohibit, limit or restrict the power and authority of the Town to institute and maintain equity proceedings in the Circuit Court of Isle of Wight County, Virginia to prevent, abate, remove, restrain and enjoin any violation or threatened violation of this section.

## Chapter 78. HAZARDOUS MATERIALS

### § 78-1. Self-service flammable liquid dispensers prohibited.

It shall be unlawful for any person to:

A. Install, manage, lease, operate or use, or make available for use or operation by the public, or permit such use or operation of, any self-service dispensing device of any kind and description, such as, but not limited to, a coin-operated, card-operated or remote preset type of device, for dispensing flammable liquids, except at service stations and/or other places of business; or

B. Dispense flammable liquids from any such dispensing device into any portable container unless such portable container is constructed of metal and has a tight closure with screwed or springed cover and fitted with a spout or is so designed and constructed that the contents therein can be poured therefrom without spilling or is approved by the Town Council; or

C. Install, manage, lease, use or operate, or make available for use or operation or permit the use or operation of any such dispensing device unless:

(1) A qualified attendant is present and on duty at all times on the premises or at the place where any such dispensing device is used or operated or is available for use or operation and where any such dispensing device may be viewed or observed by such attendant without obstruction;

(2) Emergency controls for the control of any such dispensing device are located in the building or at the place customarily occupied by such attendant;

(3) Not less than two portable operational fire extinguishers are kept in the building or at the place customarily occupied by such attendant; and

(4) Instructions for using and operating any such dispensing device are conspicuously posted at any such dispensing device.

### § 78-2. Duties of attendant.

A. In addition to the functions, duties and responsibilities that may, from time to time, be assigned to or required of the attendant hereinbefore provided for, it shall also be the function, duty and responsibility of such attendant to:

(1) Supervise, observe and control the use and operation of any such dispensing device and the dispensing of flammable liquids therefrom;

(2) Prevent the dispensing of flammable liquids into any portable container except in accordance with the provisions and requirements set out above § 78-1B;

(3) Immediately remove or clear away flammable liquids that are spilled incident to the use or operation of such dispensing devices on the premises or at the place where such dispensing devices are located;

~~(4) Use the portable fire extinguishers to extinguish fires on the premises or at the place of any such dispensing device if needed; and~~

~~(5) Control all sources of ignition.~~

~~B. It shall be unlawful for such attendant to intentionally or willfully fail to perform any of the aforesaid functions, duties and responsibilities. The attendant's intentional or willful failure to perform the aforesaid functions, duties and responsibilities shall be punishable as a Class 3 misdemeanor.~~

### **§ 78-3. Nonconforming uses.**

~~All such dispensing devices in existence, use and operation or available for use and operation at the time of the adoption of this chapter which do not conform to or comply with the requirements of this chapter are to be considered nonconforming devices, uses and operations, and it shall be unlawful for the owner, lessee or operator of all such dispensing devices to fail to make such dispensing devices, the use and operation thereof and the premises or places where such devices, uses and operations are located conform to and comply with the requirements of this chapter within three months from the date of the adoption of this chapter.~~

### **§ 78-4. Enforcement.**

~~Nothing in this chapter shall be construed to prevent, prohibit, limit or restrict the power and authority of the Town of Windsor, Virginia, to institute and maintain equity proceedings in the Circuit Court of Isle of Wight County, Virginia, to prevent, abate, remove, restrain and enjoin any violation or threatened violation of this chapter.~~

# **Chapter 89. LICENSED OCCUPATIONS**

## **Article I. License Tax**

### **§ 89-1. Overriding conflicting ordinances.**

Except as may be otherwise provided by the laws of the Commonwealth of Virginia, and notwithstanding any other current ordinances or resolutions enacted by this governing body, whether or not compiled in the Code of this jurisdiction, to the extent of any conflict, the following provisions shall be applicable to the levy, assessment, and collection of licenses required and taxes imposed on businesses, trades, professions and occupations and upon the persons, firms and corporations engaged therein within this locality.

### **§ 89-2. Definitions.**

For the purposes of this article, unless otherwise required by the context, the following terms shall have the meanings indicated:

#### **AFFILIATED GROUP**

A. One or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if stock possessing at least 80% of the voting power of all classes of stock and at least 80% of each class of the nonvoting stock of each of the includible corporations, except the common parent corporation, is owned directly by one or more of the other includible corporations; and the common parent corporation directly owns stock possessing at least 80% of the voting power of all classes of stock and at least 80% of each class of the nonvoting stock of at least one of the other includible corporation. As used in this definition, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends. The term "includible corporation" means any corporation within the affiliated group irrespective of the state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.

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

(1) At least 80% of the total combined voting power of all classes of stock entitled to vote or at least 80% of the total value of shares of all classes of the stock of each corporation; and

(2) More than 50% of the total combined voting power of all classes of stock entitled to vote or more than 50% of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

C. When one or more of the includible corporations, including the common parent corporation, is a nonstock corporation, the term "stock" as used in this definition shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

#### ASSESSMENT

A determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by the taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be deemed made by an assessing official when a written notice of assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or, if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be.

#### ASSESSOR or ASSESSING OFFICIAL

The Treasurer of this jurisdiction.

#### BASE YEAR

The calendar year preceding the license year, except for contractors subject to the provisions of § 58.1-3715, Code of Virginia, as amended.

#### BUSINESS

A course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one business. The following acts shall create a rebuttable presumption that a person is engaged in a business:

- A. Advertising or otherwise holding oneself out to the public as being engaged in a particular business; or
- B. Filing tax returns, schedules and documents that are required only of persons engaged in a trade or business.

#### CONTRACTOR

Has the meaning prescribed in § 58.1-3714, Subdivision B, Code of Virginia, as amended, whether such work is done or offered to be done by day labor, general contract or subcontract.

#### DEFINITE PLACE OF BUSINESS

An office or a location at which occurs a regular and continuous course of dealing for 30 consecutive days or more. A definite place of business for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or

seasonal basis; and real property leased to another. A person's residence shall be deemed to be a definite place of business if there is no definite place of business maintained elsewhere and the person is not licensable as a peddler or itinerant merchant.

## FINANCIAL SERVICES

The service for compensation by a credit agency, an investment company, a broker or dealer in securities and commodities or a security or commodity exchange, unless such service is otherwise provided for in this article.

### A. BROKER

— An agent of a buyer or a seller who buys or sell stocks, bonds, commodities, or services, usually on a commission basis.

### B. COMMODITY

— Staples such as wool, cotton, etc., which are traded on a commodity exchange and on which there is trading in futures.

### C. DEALER

— Any person engaged in the business of buying and selling securities for his own account, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.

### D. SECURITY

— Shall have the same meaning as in the Securities Act (§ 13.1-501 et seq., Code of Virginia, as amended) or in similar laws of the United States regulating the sale of securities.

E. Those engaged in rendering financial services include, but without limitation, the following:

- (1) Buying installment receivables.
- (2) Chattel mortgage financing.
- (3) Consumer financing.
- (4) Credit card services.
- (5) Credit unions.
- (6) Factors.
- (7) Financing accounts receivable.
- (8) Industrial loan companies.
- (9) Installment financing.
- (10) Inventory financing.
- (11) Loan or mortgage brokers.

- (12) Loan or mortgage companies.
- (13) Safety deposit box companies.
- (14) Security and commodity brokers and services.
- (15) Stockbrokers.
- (16) Working capital financing.

#### GROSS RECEIPTS

The whole, entire, total receipts attributable to the licensed privilege, without deduction, except as may be limited by the provisions of Chapter 37 of Title 58.1, Code of Virginia, as amended.

#### LICENSE YEAR

The calendar year for which a license is issued for the privilege of engaging in business.

#### PERSONAL SERVICES

Rendering for compensation any repair, personal, business or other estate or professional service under this article or rendered in any other business or occupation not specifically classified in this article unless exempted from local license tax by Title 58.1, Code of Virginia, as amended.

#### PROFESSIONAL SERVICES

Rendering any service specifically enumerated below or engaging in any occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study is used by its practical application to the affairs of others, either advising, guiding, or teaching them, and in serving their interests or welfare in the practice of an art or science founded on it. The words "profession" and "professional" imply attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others as a vocation, and including, but without limitation, such attainments attributed to the following:

- A. Architects.
- B. Attorneys-at-law.
- C. Certified public accountants.
- D. Dentists.
- E. Engineers.
- F. Land surveyors.
- G. Practitioners of the healing arts (the art or science or group of arts or science dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities).

H. Surgeons.

I. Veterinarians.

### PURCHASES

All goods, wares and merchandise received or offered for sale at each definite place of business of every wholesaler or wholesale merchant, and shall not be construed to exclude any goods, wares or merchandise otherwise coming within the meaning of such word, including such goods, wares and merchandise manufactured by a wholesale or wholesale merchant and sold or offered for sale as merchandise.

### REAL ESTATE SERVICES

Rendering a service for compensation as lessor, buyer, seller, agent or broker and providing a real estate service, unless the service is otherwise specifically provided for in this article, and such services include, but are not limited to, the following:

- A. Appraisers of real estate.
- B. Escrow agents, real estate.
- C. Fiduciaries, real estate.
- D. Lessors of real property.
- E. Real estate agents, brokers and managers.
- F. Real estate selling agents.
- G. Rental agents for real estate

### RETAILER or RETAIL MERCHANT

Any person or merchant who sells goods, wares and merchandise for use or consumption by the purchaser or for any purpose other than resale by the purchaser, but does not include sales at wholesale to institutional, commercial and industrial users.

### SERVICES

Things purchased by a customer which do not have physical characteristics, or which are not goods, wares, or merchandise.

### WHOLESALE or WHOLESALE MERCHANT

Any person or merchant who sells wares and merchandise for resale by the purchaser, including sales when the goods, wares and merchandise will be incorporated into goods and services for sale, and also includes sales to institutional, commercial and industrial users which, because of the quantity, price, or other terms, indicate that they are consistent with sales at wholesale.

### **§ 89-3. License requirement; payment schedule; late-filing penalties.**

A. License required.

(1) Every person engaging in this jurisdiction in any business, trade, profession, occupation or calling (collectively hereinafter "a business") as defined in this article, unless otherwise exempted by law, shall apply for a license for each such business if:

(a) In the case of professional services, such person:

[1] Maintains a definite office in this jurisdiction; or

[2] Does not maintain a definite office in the Commonwealth of Virginia but does maintain an abode in this jurisdiction, which abode for the purposes of this article shall be deemed a definite place of business; or

(b) In the case of any other business, such person has a definite place of business or maintains an office in this jurisdiction; or

(c) Such person is engaged as a peddler or itinerant merchant, carnival or circus as specified in §§ 58.1-3717, 58.1-3718, or 58.1-3728, Code of Virginia, respectively, as amended, or is a contractor subject to § 58.1-3715, Code of Virginia, as amended, or is a public service corporation subject to § 58.1-3731, Code of Virginia, as amended.

(2) A separate license shall be required for each definite place of business. 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:

(a) Each business or profession is licensable at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of this jurisdiction;

(b) 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

(c) The taxpayer agrees to supply such information as the Assessor may require concerning the nature of the several businesses and their gross receipts.

B. Each person subject to a license tax shall apply for a license prior to beginning business, if he was not licensable in this jurisdiction on or before January 1 of the license year, or no later than March 1 of the current license year if he had been issued a license for the preceding license year. 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 or purchases. If the tax is measured by the gross receipts or purchases of the business, the tax shall be paid on or before March 1.

D. The assessing official may grant an extension of time, not to exceed 90 days, in which to file an application for a license, for good cause. The extension may be conditioned upon the timely payment of a reasonable estimate of the appropriate tax, 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, a penalty of 10% of the portion paid after the due date.

E. A penalty of 10% 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. 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. 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 penalty assessed with the additional tax. If any assessment of tax by the assessing official is not paid within 30 days the Treasurer may impose a late payment penalty of 10%. The penalties shall not be imposed, or if imposed, shall be abated by the official who assessed them, if the failure to file or pay was not the fault of the taxpayer. 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.

(1) "Acted responsibly" means that:

(a) 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

(b) 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 it occurred was removed or the failure discovered.

(2) 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. Whenever an assessment 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 tax paid under this article 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 § 58.1-3916, Code of Virginia, as amended. No interest shall accrue on an adjustment of estimate tax liability to actual liability at the conclusion of a base year. No interest shall be paid on a refund or charge on a late payment, in event of such adjustment, provided the refund or the late payment is made not more than 30 days from the date of the payment that created the refund, or the due date of the tax, or the date of the taxpayer's application for a refund, whichever is later.

#### **§ 89-4. Situs of gross receipts.**

A. General rule. Whenever the tax imposed by this article 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 licensable privilege 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 § 58.1-3715, Code of Virginia, as amended.

(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.

(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 leased, or if the property is not leased from any definite place of business, then the definite place of business at which the rental of such property is managed.

(4) The gross receipts from the performance of personal 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 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, and the jurisdictions are unable to reach an apportionment agreement, the gross receipts of the business shall be apportioned between the definite places of businesses as provided in § 58.1-3709, Code of Virginia, as amended. 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 attributed to a definite place of business in another jurisdiction shall not be attributed to this jurisdiction in the event 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. 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. Upon being notified by a taxpayer or in the event the assessing official is notified or becomes aware that its method of attributing gross receipts is fundamentally inconsistent with the method of one or more political subdivisions in which the taxpayer is licensed to engage in business and that the difference has, or is

likely to, result in taxes on more than 100% of its gross receipts from all locations in the affected jurisdictions, the Assessor shall make a good-faith effort to reach an apportionment agreement with the other political subdivisions involved.

**§ 89-5. Limitations, extensions, appeals and rulings.**

The enforcement of the provisions of this article, including limitations with respect thereto, the correction of any assessment hereunder and any appeal by this jurisdiction of a correction made by its assessing official or by any person assessed with taxes hereunder and aggrieved by such assessment shall be pursuant to Chapter 39, Title 58.1, Code of Virginia, as amended; provided, however:

A. Any person assessed with a licensing tax under this article as the result of an audit may, within the period provided in § 58.1-3980, Code of Virginia, as amended, apply to the assessing official 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. The Assessor may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, further audit, or other evidence deemed necessary for a proper and equitable determination of the applications. The assessment shall be deemed prima facie correct. 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 an application is made within 90 days of an assessment, collection activity shall be suspended until 30 days after the 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 § 89-3F of this article, 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:

- (1) Depart quickly from the locality;
- (2) Remove his property therefrom;
- (3) Conceal himself or his property therein;
- (4) 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. Any taxpayer may request a written ruling regarding the application of the 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 there is a change in the law, a court decision, or 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.

#### **§ 89-6. Recordkeeping and audits.**

Every person who is assessable with a 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. All such records, books of accounts and other information shall be open to inspection and examination, whether a particular receipt is directly attributable to the taxable privilege exercised within this jurisdiction. 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. 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.

#### **§ 89-7. Exclusions and deductions from gross receipts.**

A. General rule. Gross receipts for license tax purposes shall not include any amount not derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business or profession.

B. The following items shall be excluded from gross receipts:

- (1) Amounts received and paid to the United States, the Commonwealth or any county, city or town for the Virginia retail sales or use tax, or for any local sales tax or any local excise tax on cigarettes, for any federal or state excise taxes on motor fuels.
- (2) Any amount representing the liquidation of a debt or conversion of another asset to the extent that the amount is attributable to a transaction previously taxed (e.g., the factoring of accounts receivable created by sales which have been included in taxable receipts even though the creation of such debt and factoring are a regular part of its business).
- (3) Any amount representing returns and allowances granted by the business to its customer.
- (4) Receipts which are the proceeds of a loan transaction in which the licensee is the obligor.
- (5) Receipts representing the return of principal of a loan transaction in which the licensee is the creditor, or the return of principal or basis upon the sale of a capital asset.
- (6) Rebates and discounts taken or received on account of purchases by the licensee. A rebate or other incentive offered to induce the recipient to purchase certain goods or services from a person other than the offeror, and which the receipt assigns to the licensee in consideration of the sale of goods and services, shall not be considered a rebate or discount to the licensee, but shall be included in the licensee's gross receipts together with any handling or other fees related to the incentive.

(7) Withdrawals from inventory for which no consideration is received and the occasional sale or exchange of assets other than inventory, whether or not a gain or loss is recognized for federal income tax purposes.

(8) Investment income not directly related to the privilege exercised by a licensable business not classified as rendering financial services. This exclusion shall apply to interest on bank accounts of the business, and to interest, dividends and other income derived from the investment of its own funds in securities and other types of investments unrelated to the licensed privilege. This exclusion shall not apply to interest, late fees and similar income attributable to an installment sale or other transaction that occurred in the regular course of business.

## **Article II. Contractors**

### **§ 89-8. Amount of tax.**

The license tax on each person engaged in contracting shall be either \$30 or \$0.10 per \$100 of gross receipts ~~up to \$1,500,000 and, or \$1,500 plus~~ \$0.08 per \$100 over \$1,500,000, whichever is greater.

### **§ 89-9. Contractors defined.**

For purposes of this article, contracting generally includes, but is not limited to, persons engaged in the following occupations, business or trades:

- A. Air-conditioning, except nonpermanent installation of window units.
- B. Brick contracting and other masonry.
- C. Building.
- D. Cementing.
- E. Dredging.
- F. Electrical contracting.
- G. Elevator installation.
- H. Erecting signs which are assessed as realty.
- I. Floor scraping or finishing.
- J. Foundations.
- K. House moving.
- L. Paint and paper decorating.
- M. Plastering.
- N. Plumbing, heating, steamfitting.

O. Refrigeration.

P. Road, street, bridge, sidewalk or curb and gutter construction.

Q. Roofing and tinning.

R. Sewer drilling and well digging.

S. Sign painting, where the sign is painted on the side of a building or structure assessed as realty.

T. Structural metal work.

U. Tile, glass, flooring and floor covering installation.

V. Wrecking, moving or excavating.

## **Article III. Retail Sales**

### **§ 89-10. Amount of tax.**

The license tax on each person engaged in retail sales shall be either \$30 or \$0.12 per \$100 of gross receipts ~~up to \$1,500,000 and or \$1,800 plus~~ \$0.08 per \$100 of gross receipts over \$1,500,000, whichever is greater.

### **§ 89-11. Definitions.**

As used in this article, the following terms shall have the meanings indicated:

#### **ITINERANT MERCHANT**

Any person who engages in, does or transacts any temporary or transient business in Virginia, either in one locality or in traveling from place to place in the sale of goods, wares and merchandise, and who, for the purpose of carrying on such business, hires, leases, uses or occupies any building or structure, motor vehicle, tent, car, boat or public room or any part thereof, including rooms in hotels, lodging houses, or houses of private entertainment, or in any street, alley or public place in any city or town, or in any public road in any county, for a period of less than one year, for the exhibition of or sale of such goods, wares or merchandise.

#### **PEDDLER**

Any person who carries from place to place any goods, wares or merchandise and offers to sell or actually sells and delivers at the same time; any person who does not keep a regular place of business, whether it be a house or vacant lot or elsewhere, with regular business hours, but at that place offers to sell goods, wares and merchandise, is a peddler; any person who keeps a regular place of business, with regular business hours at the same place, who, other than at that regular place of business, personally or through agents offers for sale or sells and, at the time of such offering for sale, delivers goods, wares and merchandise.

#### **RETAIL MERCHANT**

Any person who makes retail sales.

#### RETAIL SALE

The sales of goods, wares and merchandise for any purpose other than resale, but not including sales at wholesale to institutional, commercial and industrial users.

#### **§ 89-12. Peddlers and itinerant merchants.**

Peddlers and itinerant merchants who sell goods, wares or merchandise at retail are engaged in retail sales.

#### **§ 89-13. Merchants conducting both wholesale and retail businesses.**

When a merchant conducts both a wholesale and a retail business, the merchant may, at his election, pay the license tax on that portion of the business derived from retail sales. The merchant may, at his election, pay the license tax as a retailer on both and the retail and wholesale portions of the business.

### **Article IV. Wholesalers**

#### **§ 89-14. Amount of tax.**

The license tax on each wholesaler shall be either \$30 or \$0.05 per \$100 of purchases, whichever is greater.

#### **§ 89-15. Definitions.**

As used in this article, the following terms shall have the meanings indicated:

#### WHOLESALER

Any person who sells to others for resale or who sells at wholesale to institutional, commercial or industrial users.

#### **§ 89-16. Merchants conducting both wholesale and retail businesses.**

When a merchant conducts both a wholesale and a retail business, the merchant may, at his election, pay the license tax as a retailer on the wholesale portion of his business as provided in § 89-13.

#### **§ 89-17. Peddlers to dealers and retailers.**

A. Peddlers, as defined in § 89-11, who sell to licensed dealers or retailers are wholesalers, except that this section shall not apply to:

(1) A wholesale dealer regularly licensed by this Town and who shall, at the same time, sell and deliver merchandise to retail merchants;

- (2) A distributor or vendor of motor vehicle fuels and petroleum products, or seafood;
- (3) A farmer;
- (4) A dealer in forest products;
- (5) A farmers' cooperative association;
- (6) A producer of agricultural products; or
- (7) A manufacturer taxable on capital by the Commonwealth of Virginia who peddles the goods, wares or merchandise manufactured by him at a plant, the capital of which is taxable by the Commonwealth of Virginia, and who peddles no other goods, wares or merchandise.

B. Every person, firm or corporation claiming to be a distributor or vendor of motor vehicle fuels or petroleum products, a farmer, a dealer in forest products, tobacco or seafood, a producer of agricultural products, a wholesale dealer, a manufacturer taxable on capital by the Commonwealth of Virginia or a distributor of manufactured goods paying a Commonwealth of Virginia license tax on his purchases and selling and delivering at the same time or offering to sell and deliver at the same time to licensed dealers or retailers such goods, wares or merchandise shall, upon request of any police, tax or revenue officer of the Town, furnish evidence of his claim other than his mere statement that he is exempt from the provisions of this article, and failure to furnish such evidence shall be sufficient ground for charging the person operating the vehicle with a violation of this article.

C. Every person, firm or corporation claiming exemption from the provisions of this article on the ground that it is delivering goods, wares or merchandise previously sold to the customer shall, upon request of any police, tax or revenue officer of the Town, furnish evidence of its claims other than its mere statement. The evidence may be an invoice or signed order describing the goods, wares or merchandise involved and the amount and price thereof. Failure to furnish such evidence shall be sufficient ground for charging the person operating the vehicle with a violation of this article.

D. The exemption accorded a distributor or vendor of motor vehicle fuels and petroleum products and a dealer in forest products is restricted to such peddling of motor vehicle fuels and petroleum products and forest products; and in the case of a farmer, a producer of agricultural products or a manufacturer taxable on capital by the Commonwealth of Virginia, the exemption is restricted to such peddling of goods, wares or merchandise actually manufactured, produced or grown by the seller.

## **Article V. Financial, Real Estate and Professional Services**

### **§ 89-18. Amount of tax.**

The license tax on each person engaged in financial, real estate and professional services shall be either \$30 or \$0.35 per \$100 of gross receipts ~~up to \$1,500,000 and, or \$5,250 plus~~ \$0.223 per \$100 over \$1,500,000, whichever is greater.

### **§ 89-19. Definitions.**

As used in this article, the following terms shall have the meanings indicated:

## FINANCIAL SERVICE

Unless otherwise specifically provided herein, any person rendering a service for compensation in the form of a credit agency, an investment company, a broker or dealer in securities and commodities or a security or commodity exchange. Those engaged in rendering financial services include, but are not limited to, the following:

- A. Buying installment receivables.
- B. Chattel mortgage financing.
- C. Consumer financing.
- D. Credit card services.
- E. Credit unions.
- F. Factors.
- G. Financing accounts receivable.
- H. Industrial loan companies.
- I. Installment financing.
- J. Inventory financing.
- K. Loan or mortgage brokers.
- L. Loan or mortgage companies.
- M. Safety deposit box companies.
- N. Security and commodity brokers and services.
- O. Stockbrokers.
- P. Working capital financing.

## PROFESSIONAL SERVICE

A person is engaged in providing a professional service if engaged in rendering any service specifically enumerated below or engaged in any occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study, is used by its practical application to the affairs of others, either advising, guiding, or teaching them, and in serving their interests or welfare in the practice of an art or science founded on it. The word "profession" implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others as a vocation. Those engaged in rendering a professional science include, but are not limited to, the following:

- A. Architects.
- B. Attorneys-at-law.

- C. Certified public accountants.
- D. Dentists.
- E. Engineers.
- F. Land surveyors.
- G. Pharmacists.
- H. Practitioners of the healing arts.
- I. Surgeons.
- J. Veterinarians.

#### REAL ESTATE SERVICE

Unless otherwise specifically provided herein, any person rendering a service for compensation as lessor, buyer, seller, developer, agent or broker is providing a real estate service.

A. Those rendering real estate services include, but are not limited to, the following:

- (1) Appraisers of real estate.
- (2) Escrow agents, real estate.
- (3) Fiduciaries, real estate.
- (4) Lessors of real property.
- (5) Owner-operators and lessors of hotels, motels, motor lodges, auto courts, tourist courts, transient trailer parks, lodging houses, rooming houses and boardinghouses.
- (6) Real estate agents, brokers and managers.
- (7) Real estate selling agents.
- (8) Rental agents for real estate.

B. This tax shall not apply to any person engaging in the business of renting, as owner of such property, real property other than hotels, motels, motor lodges, auto courts, tourist courts, transient trailer parts, lodging houses, rooming houses, boardinghouses.

## **Article VI. Operators of Coin-Operated Machines, Carnivals, Fortune Tellers and Massage Parlors**

### **§ 89-20. Amount of tax on coin-operated machines; applicability.**

The license tax on each operator (person, firm or corporation selling, leasing, renting or otherwise furnishing such a device) shall be \$100 or \$.025 per \$100 of gross receipts, whichever is greater.~~\$200.~~

The tax shall apply to an operator when any such coin-operated machine or device operated on the coin-in-the-slot principal of such operator is located within the Town of Windsor.

A. Peddlers. The license tax on peddlers shall be \$50 per day.

B. Farm vendors. The license tax on farm vendors shall be:

(1) Town market: \$30 per year.

(2) Others: \$5 per day.

### **§ 89-21. Amount of tax on carnivals.**

The license tax on each carnival shall be \$100 per day.

### **§ 89-22. Amount of tax on fortune tellers.**

The license tax on each fortune teller shall be \$200 per day.

### **§ 89-23. Amount of tax on massage parlors.**

The license tax on each massage parlor shall be \$1,000 per day.

### **§ 89-24. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

#### **CARNIVAL**

An aggregation of shows, amusements, concessions and riding devices or any of them operated together on one lot or street or on contiguous lots or streets, moving from place to place, whether the same are owned and actually operated by separate persons or not. The term includes but is not limited to sideshows, dog and pony shows, trained animal shows, circuses and menageries.

#### **FORTUNE TELLER**

A clairvoyant, a practitioner of palmistry, a phrenologist, a faith healer, a star analyst, a handwriting analyst who attempts to predict the future, or any other person who attempts to predict the future.

#### **OPERATOR**

Any person, firm or corporation selling, leasing, renting or otherwise furnishing or providing a coin-operated machine or device operated on the coin-in-the-slot principle; provided, however, the term "operator" shall not include a person, firm or corporation owning less than three coin machines and operating such machines on property owned or leased by such person, firm or corporation.

## **Article VII. Alcoholic Beverages**

### **§ 89-25. License taxes.**

Every person engaged in selling or dispensing alcoholic beverages shall pay the following license taxes:

- A. For each retail mixed alcoholic beverage license: \$200.
- B. For each retail on-premises beer license: \$25.
- C. For each retail off-premises beer license: \$25.
- D. For each retail off-premises wine and beer license: \$37.50.
- E. For each retail on- and off-premises wine and beer license: \$75.

### **§ 89-26. State license also required.**

No license shall be issued under this article to any person unless such person shall hold or shall secure simultaneously therewith the proper state license required by the Alcoholic Beverage Control Act, which state license shall be exhibited to the Treasurer of the Town.

### **§ 89-27. Applicability of other Town licenses.**

Each license required under this article shall be in lieu of a merchant's or restaurant's license on that portion of the business of the license covered thereby, but no such license shall relieve any license of any other Town license required by this Code or other ordinance.

### **§ 89-28. Transferability; amendment.**

No license required under this article shall be transferable from one person to another, but it may be amended to show a change in the place of business within the Town.

## **Article VIII. Public Service Companies**

### **§ 89-29. Amount of tax on telephone and telegraph companies.**

The license tax on each telephone or telegraph company shall be 0.5% of gross receipts, except that charges for long distance telephone calls shall not be considered as part of such gross receipts.

### **§ 89-30. Amount of tax on water or heat, light and power companies.**

The license tax on each corporation furnishing water or heat, light and power, whether by means of electricity or gas, shall be 0.5% of gross receipts.

# **Article IX. Repair, Personal and Business Services and Other Businesses and Services**

## **§ 89-31. Amount of tax.**

The license tax on each repair, personal and business services and all other businesses and services not specifically enumerated or excepted in this chapter shall be either \$30 or \$0.20 per \$100 of gross receipts up to \$1,500,000 and, ~~or \$3,000 plus~~ \$0.133 per \$100 per \$1,500,000, whichever is greater.

## **§ 89-32. Definitions.**

As used in this article, the following terms shall have the meanings indicated:

### **BUSINESS SERVICE**

Any service rendered for compensation to any business, trade, occupation or governmental agency, unless the service is specifically provided for under another section of this chapter.

### **PERSONAL SERVICE**

Any service rendered for compensation either upon or for persons, animals or personal effects, unless the service is specifically provided for under another section of this chapter.

### **REPAIR SERVICE**

The repairing, renovating, cleaning or servicing of some article or item of personal property for compensation, unless the service is specifically provided for under another section of this chapter.

## **§ 89-33. Repair, personal and other services enumerated.**

Those rendering a repair, personal or other service as provided in § 89-32 include, but are not limited to the following:

Advertising agencies

Airports

Ambulance service

Amusements and recreation services (all types)

Animal hospitals, grooming services, kennels, or stables

Auctioneers and common criers

Automobile driving schools

Barber shops, beauty parlors, and hairdressing establishments, schools and services

Bid or building reporting service

Billiard or pool establishments or parlors

Blacksmiths or wheelwrights

Bondsmen

Booking agents or concert managers

Bottle exchanges

Bowling alleys

Brokers and commission merchants other than real estate or financial brokers

Business research and consulting services

Chartered clubs

Child-care attendants or schools

Collection agents or agencies

Commercial photography, art and graphics

Commercial sports

Commission merchants

Dance halls, studios and schools

Data processing, computer and systems development services

Developing or enlarging photographs

Detective agencies and protective services

Drafting services

Engraving

Erecting, installing, removing or storing awnings

Extermination services, except those constituting contracting

Freight traffic bureaus

Fumigating or disinfecting

Funeral services and crematories

Golf courses, driving ranges and miniature golf courses

Hauling of sand, gravel or dirt

Hotels, motels, tourist courts, boarding- and rooming houses and transient trailer parks and campsites

House cleaning services

Impounding lots

Information bureaus

Instructors, tutors, schools and studios of music, ceramics, art, sewing, sports and the like

Interior decorating

Janitorial services

Laundry cleaning and garment services, including laundries, dry cleaners, linen supply, diaper service, coin-operated laundries and upholstery cleaning

Hailing, messenger and correspondent services

Marinas and boat landings

Movie theaters and drive-in theaters

Nickel plating, chromizing and electroplating

Nurses and physician registries

Nursing and personal care facilities, including nursing homes, convalescent homes, homes for the retarded, old age homes and rest homes

Packing, crating, shipping, hauling or moving goods or chattels for others

Parcel delivery services

Parking lots, public garages and valet parking

Pawn brokers

Personnel services, labor agents and employment bureaus

Photographers and photographic services

Piano tuning

Picture framing and gilding

Porter services

Press clipping services

Printers

Private hospitals

Promotional agents and agencies

Public relations services

Renting or leasing any items of tangible personal property

Reproduction services

Secretarial services

Septic tank cleaning

Shoe repair, shoe shine and hat repair shops

Sign painting, except as set forth in § 89-7

Speculative builders

Storage, all types

Subdividers and developers

Swimming pool maintenance and management

Tabulation services

Taxidermists

Telephone answering services

Theaters

Theatrical performers, bands and orchestras

Towing services

Transportation services, including buses and taxis

Travel bureaus

Tree surgeons, trimmers and removal services

Turkish, Roman or other like baths or parlors

Wake-up services

Washing, cleaning or polishing automobiles