

CHAPTER 7
BUSINESS, PROFESSIONAL, AND OCCUPATIONAL
LICENSE TAXES
SECTION 7-1 through SECTION 7-41 Repealed effective December 31, 1995.

CHAPTER 7.1
BUSINESS, PROFESSIONAL, AND OCCUPATIONAL
LICENSE TAXES
ARTICLE I. IN GENERAL

Section 7.1-1 AUTHORITY FOR CHAPTER.

§58.1-3703 of the Code of Virginia, 1950, as amended, (hereinafter “Virginia Code”) authorizes localities to enact an ordinance levying a Business, Professional, and Occupational license tax (BPOL). This chapter is enacted pursuant to such authority and pursuant to various other authority granted in Chapter 37 of Title 58.1 of the said Virginia Code.

Section 7.1-2 DEFINITIONS. For the purpose of this ordinance, unless otherwise required by the context:
(A) “Affiliated Group” means:

1. One or more chains of corporations subject to inclusion connected through stock ownership with a common parent corporation which is a corporation subject to inclusion if:
 - a. Stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of each of the corporations subject to inclusion, is owned directly by one or more of the other corporations subject to inclusion; and
 - b. The common parent corporation directly owns stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at least one of the other subject to inclusion corporations. As used in this subdivision, the term “stock” does not include nonvoting stock which is limited and preferred as to dividends; the phrase “corporation subject to inclusion” means any corporation within the affiliated group irrespective of the state or county of its incorporation; and the term “receipts” includes gross receipts and gross income.
2. Two or more companies if five or fewer persons who are individuals, estates or trusts own stock possessing:
 - a. At least eighty percent of the total combined voting power of all classes of stock entitled to vote or at least eighty percent of the total value of shares of all classes of the stock of each corporation; and
 - b. More than fifty percent of the combined voting power of all classes of stock entitled to vote or more than fifty percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent such stock ownership is identical with respect to each such corporation.
 - c. When one or more of the corporations subject to inclusion, including the common parent corporation, is a nonstock corporation, the term “stock” as used in this subdivision shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the

context.

- (B) “Ancillary” means subordinate to, subservient to, auxiliary to, or in aid of, that which is principal and primary.
- (C) “Assessment” means a determination as to the proper rate of tax, the measure to which the tax 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 a taxpayer upon the filing of the return or otherwise not pursuant to notice. Assessments shall be deemed made by an assessing official when 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.
- (D) “Base Year” means the calendar year preceding the license year, except for contractors subject to the provisions of Section 58.1-3715 (Virginia Code) or unless the local ordinance provides for a different period for measuring the gross receipts of a business, such as for beginning businesses or to allow an option to use the same fiscal year as for federal income tax purposes.
- (E) “Business” means 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 or more than one business. The following acts shall create a rebuttable presumption that a person is engaged in a business: (i) advertising or otherwise holding oneself out to the public as being engaged in a particular business or (ii) filing tax returns, schedules and documents that are required only of persons engaged in a trade or business.
- (F) “Definite Place of Business” means an office or location at which occurs a regular and continuous course of dealing for thirty consecutive days or more. A definite place of business for a person engaged in a 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 subject to licensure as a peddler or itinerant merchant.
- (G) “Financial Services” means the buying, selling, handling, managing, investing, and providing of advice regarding money, credit, securities, or other investments.
- (H) “Gross receipts” means the whole, entire receipts without deduction.
- (I) “License Year” means the calendar year for which a license is issued for the privilege of engaging in business.
- (J) “Professional Services” means services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such other occupations and no others. The word “profession” implies attainments in professional

knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.

- (K) "Purchases" means all goods, wares, and merchandise received for sale at each definite place of business of a wholesale merchant. The term shall also include the cost of manufacture of all goods, wares, and merchandise manufactured by any wholesale merchant and sold and offered for sale. A wholesale merchant may elect to report the gross receipts from the sale of manufactured goods, wares and merchandise if it cannot determine the costs of manufacture or chooses not to disclose the cost of manufacture.
- (L) "Real Estate Services" means providing a service with respect to the purchase, sale, lease, rental, or appraisal of real property.
- (M) "Retail sale" means a sale of 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 which are classified as wholesale sales.
- (N) "Itinerant Merchant" means a person, firm, or corporation who shall engage in, do or transact any temporary or transient business in this Town, the sale of goods, wares, and merchandise and who for the purpose of carrying on such business shall hire, lease, use, or occupy 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 other public place, or in any public road, for a period of less than one year, for the exhibition of or sale of such goods, wares, or merchandise. The term "itinerant merchant" shall not mean persons who sell or offer for sale in person or by their employees ice, wood, charcoal, meats, milk, butter, eggs, poultry, fish, oysters, game, vegetables, fruit, or other family supplies of a perishable nature or farm products grown or produced by them and not purchased by them for sale; a regular wholesale dealer, who shall at the same time sell and deliver merchandise to retail merchants; or a distributor or vendor of motor fuels and petroleum to a producer of agricultural products.
- (O) "Peddler" includes all of the following persons: Any person who shall carry from place to place any goods, wares, or merchandise and offer to sell or barter the same, or actually sell or barter the same, shall be deemed to be a peddler. All persons who do not keep a regular place of business, whether it be a house or a vacant lot or elsewhere, open at all times in regular business hours and at the same place, who shall offer for sale goods, wares, and merchandise, shall be deemed peddlers. All persons who keep a regular place of business open at all times in regular business hours and at the same place, who shall, elsewhere than at such regular place of business, personally or through their agents, offer for sale or sell and, at the time of such offering for sale, deliver goods, wares, and merchandise shall also be deemed peddlers as above; but this term shall not apply to those who sell or offer for sale in person or by their employees ice, wood, charcoal, meats, milk, butter, eggs, poultry, fish, oysters, game, vegetables, fruits or other family supplies of a perishable nature or farm products, grown or produced by them and not purchased by them for sale. This term shall not include a dairyman who uses upon the streets of this town vehicles to sell and deliver from his vehicles, milk, butter, cream and eggs; persons who would otherwise be peddlers and who sell to licensed dealers or retailers only; a regular wholesale dealer who shall sell at a distributor or vendor of motor fuels and petroleum products; or seafood; a farmer; a farmers' cooperative association; a producer of agricultural products, or a manufacturer who is subject to the Virginia tax on intangible personal property and who peddles only the goods, wares, or merchandise manufactured by him at a plant whose intangible personal property is taxed by the Commonwealth.

- (P) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association. Such term shall include any trustee, receiver, assignee or personal representative thereof carrying or continuing a business, profession, trade, or occupation, but shall not include a court-appointed trustee, receiver, or personal representative, in the liquidation of assets for immediate distribution, or a sergeant or sheriff or any deputy selling under authority of process or writ of a court or justice. Such term, for the purposes of Section 7-1 .8 shall not include a volunteer fire department, a volunteer rescue squad, or a non-profit organization operating a community center, swimming pool, tennis court, or other educational, cultural, recreational or athletic facilities and facilities for the welfare of the residents of the area.
- (Q) "Services" means things purchased by a customer which do not have physical characteristics, or which are not goods, wares, or merchandise.
- (R) "Wholesale sale" means a sale of goods, wares, and merchandise for resale by the purchaser, including sales when the goods, wares, and merchandise will be incorporated into goods, wares, and merchandise for sale, and also includes sales to institutional, commercial, industrial, and governmental users which because of the facts and circumstances surrounding the sales, such as the quantity, price, or other items indicate that they are consistent with sales at wholesale.

Section 7.1-3 MULTIPLE BUSINESSES.

Multiple businesses conducted by a person at a single location may be required to obtain a separate license for each business.

- A. Each such business must be clearly identifiable as a separate business and not merely activities ancillary to the primary business or de minimis. An activity for which no separate charge is made is presumed to be ancillary to the activity for which a charge is made, but separately stating charges for different activities does not create a presumption that each such activity is a separate business. Gross receipts attributable to any ancillary activities are taxable as part of the primary licensable business. Gross receipts which are de minimis and not ancillary to a licensable business shall be taxable as part of the licensable business, if any, or to the licensable business to which they are most closely related, if there is more than one such business. The following are examples of activities which may be ancillary or de minimis:
1. A merchant (retail or wholesale) offers an extended warranty with the merchandise it sells. The warranty covers parts and labor, and may include replacement of defective merchandise. Although a separate charge is made for the warranty, at the time of sale it is impossible to determine how much of the charge will be used (if any) for labor, parts, or replacement merchandise. The charge for an extended warranty is ancillary to the sale of the merchandise.
 2. A retail merchant offers to deliver the merchandise it sells for a fee. The merchant has its own delivery trucks, but also contracts with third parties to make some of the deliveries. The fee charged to the customer varies with distance, but does not depend on whether the merchandise is delivered by the merchant or a third party. Because the delivery service is only offered with respect to merchandise sold by the merchant, the delivery charge is ancillary to the merchandising business.
 3. A repair service must occasionally replace small, inexpensive parts. It does not separately charge for the parts. The provision of parts is ancillary to the repair service.
 4. A firm offers repair service at numerous offices in several states. At its headquarters the firm

employs lawyers and certified public accountants to assist in managing its operations. The firm also employs a real estate professional, engineer, and architect to find and develop locations for new offices. None of these employees offer their services to anyone other than the firm, and the firm does not separately charge anyone for the activities of its professional employees. The activities of these employees are ancillary to the firm's repair business and do not generate gross receipts.

5. A retail merchant offers installment contracts in conjunction with the sale of its merchandise. Each contract provides for the payment of interest and collection costs, including attorneys' fees of 20% of any delinquent amount collected by legal action.

- (a) Interest received pursuant to the installment sales contract is ancillary to the retail sale of the merchandise.

- (b) If the merchant employs a salaried staff attorney to collect delinquencies under the installment sales contract, any amounts collected would be ancillary to the retail sales of merchandise. (But, see the definition of "gross receipts" for the impact of the cash or accrual method of accounting.)

B. The Town permits, but does not require, a taxpayer to elect any of the following:

1. Multiple businesses conducted at a single location may be taxed under a single license if all are taxable at the same rate; or
2. Multiple businesses conducted at a single location may be taxed at the highest rate if the businesses are subject to tax at different rates; or
3. A single business may be issued separate licenses for its primary business and one or more ancillary activities which would be taxed at a different rate if the ancillary activities constituted a separate business.

C. The following are examples of multiple businesses that may be required to obtain multiple licenses:

1. When a merchant conducts both a wholesale and a retail business, the merchant is subject to the retail license tax on the retail portion of the business and subject to the wholesale license tax on the wholesale portion of the business. However, the Town permits but does not require the merchant to pay the license tax as a retailer on both the retail and wholesale portions of the business.
2. Any person engaged in repair service who sells parts in addition to or as part of the repair service, is engaged in retail or wholesale sales as to the sales of the repair parts, in addition to the licensable service business.
3. Any hotel, motel, boardinghouse, or lodging house which also furnishes or sells food or merchandise for compensation is engaged in retail sales as to the sale of the food or merchandise.
4. Any person who merely fills prescriptions for or fits corrective lenses and eyeglass frames is a retail merchant. However, any practitioner who examines eyes is engaged in rendering a professional service.

5. Any practitioner of a profession who sells goods, wares, or merchandise in connection with the practice of the profession may be engaged in making retail sales depending on the nature of the products sold and the service performed.
6. A medical doctor who engages in the sale of drugs or other merchandise as well as the practice of medicine is a merchant as to those sales. However, a medical doctor is not a merchant as to the drugs used in giving an immunization to a patient.
7. A chiropodist who sells shoes in connection with his practice is a retail merchant as to such sales.

Section 7.1-4 MULTIPLE LOCATIONS.

The classification of a business generally depends on the nature of the goods or services offered to the customers of the business for consideration. In the case of a business which conducts different activities at multiple locations, proper classification of the business may require consideration of its activities at its various locations in addition to the licensed location, i.e., the overall nature of the business. For example:

- A. A complex product is manufactured in stages at different locations. It is undisputed that the overall process is manufacturing. However, final assembly and processing occur at a separate location and, viewed in isolation, the activities at this location may not cause sufficient transformation to be considered manufacturing. The location will be considered a “place of manufacture” for purposes of classifying the gross receipts or purchases as arising from sales at wholesale at the place of manufacture.
- B. A contractor maintains a staff of architects and engineers and bids on “design-build” contracts. The bids are for a lump sum and do not segregate design costs from building costs. The entire gross receipts are subject to license tax as a contractor in the locality in which the building is constructed. The design activities are ancillary to the contracting activities and the contractor will not be required to obtain a professional license for the architects and engineers.

Section 7.1-5 EMPLOYEES.

Employees are generally not engaged in a licensable business separate from that of their employer. Therefore, a license obtained by the employer generally covers the activities of any employees.

Section 7.1-6 INDEPENDENT CONTRACTORS.

Independent contractors are engaged in a business separate from that of the person who contracts for the independent contractor’s services.

- A. Therefore, if one licensable business subcontracts some of its business to an independent contractor, the primary business may not deduct from its taxable gross receipts any payments to an independent contractor even though the independent contractor or subcontractor is also taxable on its gross receipts.
- B. The determination as to whether a person is an employee or an independent contractor is based on common law principles and is affected by factors such as control, who furnishes materials, and other factors.

- C. The Town is entitled to rely upon the classification of a person as an employee or independent contractor for federal payroll tax purposes unless the licensee demonstrates that the classification for federal payroll tax purposes is erroneous or inapplicable.

Section 7.1-7 RECORD KEEPING AND AUDITS

Every person who is assessable with a local license tax shall keep sufficient records to enable the Clerk to verify the correctness of the tax paid for the license years assessable and to enable the Clerk to ascertain what is the correct amount of tax that was assessable for each of those years. All such records, books of accounts, and other information shall be open to inspection and examination by the Clerk in order to allow the Clerk to establish whether a particular receipt is directly attributable to the taxing privilege exercised within this jurisdiction. The assessor shall provide the taxpayer with the option to conduct the audit in the licensee'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 shall be sent to the Clerk's Office upon demand.

Section 7.1-7(1) CONSISTENT REPORTING AND COORDINATED ENFORCEMENT.

The Clerk or other local official administering the license tax may consult with federal, state, and local government officials to verify that any relevant certifications, determinations, or classifications, made by such other government official or the licensee for other tax or regulatory purposes are consistent with the classification claimed by the licensee for local license tax purposes or to coordinate enforcement of various tax and regulatory provisions. No presumption shall be established by the action or inaction of another government official unless the applicable law, regulation, or policy administered by the other government official is substantially similar to the definition, law, ordinance, or other provision applicable for BPOL purposes. For example:

- A. The Clerk may consult with federal and state tax officials concerning whether a person who claims not to be engaged in business for local license tax purposes properly filed a schedule C with his federal and state income tax returns.
- B. The Clerk may verify whether federal forms W-2, 1099, or similar forms have been filed with respect to persons or income for which classification as an employee or independent contractor is an issue.
- C. The Clerk may verify whether a person has obtained or is required to obtain a state or local regulatory license as a contractor's license, professional license, zoning approval, building permit, etc. The existence or absence of such other regulatory action generally will not establish a presumption with respect to BPOL tax issues because different definitions, purposes, and policies are involved.

Section 7.1-7.2 - RESERVED

Section 7.1-7.3 FAILURE TO MAINTAIN RECORDS.

If any licensee shall fail or refuse to maintain the records and accounts required in this section, regularly supported by customary vouchers, the town clerk shall not issue or renew any license until the records of such gross receipts or gross expenditures have been supplied to the clerk.

Section 7.1-7.4 POWER OF TOWN TO SUMMONS.

If the Clerk has reason to believe that any report or statement filed by a licensee pursuant to this chapter is incorrect, he shall require an investigation of the licensee's books and records to be made and shall ascertain whether such person has made a true and correct report or statement. To that end, the Clerk is expressly authorized and empowered, when necessary, to summon books and papers which he has reasonable cause to believe will clarify the matter under investigation. He shall also be empowered to make such further investigation and examination as he may deem necessary and proper in order to determine accurately the proper report to be made by such person. In such investigation and examination, the Clerk is specifically authorized to place the applicant under oath.

Section 7.1-7.5 IMPOSITION OF PENALTIES FOR FAILURE TO COMPLY.

If the Clerk shall ascertain that any person has failed or refused to obtain the proper license, as required by the provisions of this chapter for the current license tax year or any one or more of the three (3) immediately past license tax years, he shall assess such license taxes and penalties. Interest shall be computed from the date on which such license tax first became due, for the current license tax year and each of the three (3) immediately past license tax years for which such tax, penalty, and interest are assessable. Interest shall be computed at the rate of ten (10) percent per annum for the first year of each respective delinquency. Interest for the second and subsequent years of each respective delinquency shall be computed at the rate of interest established pursuant to Section 6621 of the Internal Revenue Code of 1953, as amended, or ten (10) percent, whichever is greater.

Section 7.1-8 EXEMPTIONS.

The following are wholly exempt from the license fee or levy imposed by this ordinance:

- (a) the design, development or other creation of computer software for lease, sale or license;
- (b) any public service corporation except as provided in Section 58.1-3731 (Virginia Code) or as permitted by other provisions of law;
- (c) the selling of farm or domestic products or nursery products, ornamental or otherwise, or for the planting of nursery products, as an incident to the sale thereof, outside of the regular market houses and sheds of this town; provided such products are grown or produced by the person offering such products for sale;
- (d) the privilege or right of printing or publishing any newspaper, magazines, newsletter or other publication issued daily or regularly at average intervals not exceeding three months, providing the publication's subscription sales are exempt from the state sale tax, or for the privilege or right of operating or conducting any radio or television broadcasting station or service;
- (e) A manufacturer for the privilege of manufacturing and selling goods, wares, and merchandise at wholesale at the place of manufacture;
- (f) A person engaged in the business of severing minerals from the earth for the privilege of selling the severed minerals at wholesale at the place of severance except as provided in Sections 58.1-3712 and 58.1-3713 (Virginia Code);
- (g) A wholesaler for the privilege of selling goods, wares and merchandise to other persons for resale unless such wholesaler has a definite place of business or store in this Town. This Section does not prevent, however, the Town from imposing the local license tax on a peddler at wholesale;
- (h) A person, firm or corporation for engaging in the business of renting, as the owner of such

property, real property other than hotels, motels, motor lodges, autocourts, tourist courts, travel trailer parks, lodging houses, rooming houses and boarding houses;

- (i) A wholesaler or retailer for the privilege of selling bicentennial medals on a nonprofit basis for the benefit of the Virginia Independence Bicentennial Commission;
- (j) On or measured by receipts for management, accounting or administrative services provided on a group basis under a non-profit cost-sharing agreement by a corporation which is an agricultural cooperative association under the provisions of Chapter 3, Article 2, Title 13.1 (Virginia Code) or a member or subsidiary or affiliated association thereof or to other members of the same group. This shall not exempt any such corporation from such license or other tax measured from outside the group;
- (k) On or measured by receipts or purchases by a corporation which is a member of an affiliated group of corporations from other members of the same group. This does not exempt affiliated corporations from such license or other tax measured by receipts or purchases from outside the affiliated group; and shall also not preclude the Town from levying a wholesale merchant's license tax on an affiliated corporation on those sales by the affiliated corporation to a nonaffiliated person, company, or corporation notwithstanding the fact that the wholesale merchant's license tax would be based upon purchases from an affiliated corporation. Such tax shall be based on the purchase price of the goods sold to the nonaffiliated person, company, or corporation. As used in this subdivision the term "sales by the affiliated corporation to a nonaffiliated person, company or corporation" shall mean sales by the affiliated corporation to a nonaffiliated person, company or corporation where goods sold by the affiliated corporation or its agents are manufactured or stored in the Commonwealth prior to their delivery to the nonaffiliated person, company or corporation;
- (l) On any insurance company subject to taxation under Chapter 25 of Title 58.1 (Virginia Code);
- (m) On any bank or trust company subject to taxation under Chapter 12 of Title 58.1 (Virginia Code);
- (n) Upon a taxicab driver, if the Town has imposed a license tax upon the taxicab company for which the taxicab driver operates;
- (o) On any blind person operating a vending stand or other business enterprise under the jurisdiction of the Virginia Department for the Visually Handicapped or a nominee of the Department as set forth in Section 63.1-164 (Virginia Code);
- (p) (EXPIRES JULY 1, 1997) On any hospital, college, university or other institution of learning not organized or conducted for pecuniary profit which by reason of its purposes or activities is exempt from income tax under the laws of the United States;
- (q) On an accredited religious practitioner in the practice of the religious tenants of any church or religious denomination. "Accredited religious practitioner" is one who is engaged solely in praying for others upon accreditation by such church or religious denomination;
- (r) On or measured by receipts of a charitable nonprofit organization except to the extent the organization has receipts from an unrelated trade or business the income of which is taxable under Internal Revenue Code Section 511, et seq. "Charitable nonprofit organization" means an organization which is described in Internal Revenue Code Section 501(c) (3) and to which contributions are deductible by the contributor under Internal Revenue Code Section 170, except that educational institutions shall be limited to schools, colleges, and other similar institutions of learning;

- (s) On or measured by gifts, contributions and membership dues of a nonprofit organization. Activities conducted for consideration which are similar to activities conducted for consideration by for-profit businesses shall be presumed to be activities that are part of a business subject to licensure For purposes of this Section “nonprofit organization” means an organization exempt from federal income tax under Internal Revenue Code Section 501, other than charitable nonprofit organizations;
- (t) On any venture capital fund or other investment fund, except commissions and fees of such fund; and
- (u) On the license and admissions taxes established under Sections 59.1-392 and 59.1-393, Virginia Code, nor shall it include pan-mutual wagering pools as established under Section 59.1-392, Virginia Code.
- (v) Certain categories of businesses may be granted specific exemptions of certain amounts of gross receipts.

Section 7.1-9 VIOLATIONS OF CHAPTER.

It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this chapter. Unless otherwise provided, any such violation shall be punishable by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00). Each day any such violation shall continue shall constitute a separate offense.

Section 7.1-10 FEE FOR ISSUING LICENSE.

The Fee for issuing a license under this Chapter shall be Thirty (\$30.00) Dollars per license, except where no license fee is required.

Section 7.1-11 CALCULATION OF GROSS RECEIPTS FOR PURPOSES OF THIS CHAPTER.

The calculation of gross receipts, for the purposes of this chapter, shall be on either a cash or accrual basis, as determined by the accounting system of the licensee.

Section 7.1-12 OBSTRUCTION OF PUBLIC PLACE OR COMMISSION OR MAINTENANCE OF A NUISANCE PROHIBITED.

Nothing contained in this chapter shall be construed as giving the right to any person to obstruct the sidewalks, streets, or other public places within the town or to commit or maintain a nuisance.

Section 7.1-13 REQUIREMENT.

Every person, company or corporation shall apply for a license for each business or profession when engaging in a business in this jurisdiction if (i) the person has a definite place of business in this jurisdiction; (ii) there is no definite place of business anywhere and the person resides in this jurisdiction; or (iii) 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 Section 58.1-3715, (Virginia Code), or public service corporation. A separate license shall be required for each definite place of business and for each 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 carried on at the same place of businesses and professions if all of the following criteria are satisfied: (i) 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; (ii) all of the business 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 (iii) the taxpayer agrees to supply such information as the Clerk may require concerning the nature of the several businesses and their gross receipts.

Section 7.1-14 APPLICATION.

- (a) All persons upon whom a license tax is imposed by this chapter shall make application for such license in the Clerk's Office of the Town of Floyd, 138 Wilson Street, Floyd, Virginia 24091. Each application shall be completed in its entirety.
- (b) The applicant for license shall in writing provide the Town, with the correct business name, business mailing address, business street address, the nature or type of business, and where specified in this chapter a record of gross receipts, verified by oath, for the next proceeding year.
- (c) No license shall be issued by the Clerk of the Town until all such information herein required has been given and the license tax liability has been paid.
- (d) The payment of penalty and/or interest under this ordinance shall not relieve any person from prosecution for engaging in any business, profession, trade, or occupation without a license in violation of Section 7.1-9 herein.

Section 7.1-15 TAXES IMPOSED ON PRIVILEGE OF ENGAGING IN A BUSINESS, PROFESSION, TRADE, OR OCCUPATION.

All of the taxes imposed by this chapter are in all cases imposed on the privilege of doing business or engaging in a profession, trade, and occupation in the Town.

Section 7.1-16 WHEN TAX DUE AND PAYABLE.

- (a) Each person subject to a license tax shall apply for a license prior to beginning business if he was not subject to licensure in the Town on or before January 1 of the license year, or no later than March 1 of the license year if he had not been issued a license for the preceding year. The application shall be on forms prescribed and provided by the Clerk of the Town.
- (b) 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 later date, including installment payment dates, or thirty or more days after beginning business, at the locality's option.
- (c) The Clerk of the Town may grant an extension of time in which to file an application for a license, for reasonable cause. The extension may be conditioned on 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.
- (d) A penalty of ten percent is imposed upon any person, subject to licensure, upon such person's

failure to file an application or the failure to pay the tax imposed herein by the 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 Clerk of the Town 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 by the said Clerk, 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. If any assessment of tax by the Clerk is not paid within thirty days, the Clerk may impose a ten percent late payment penalty. If the failure to file or pay is not the fault of the taxpayer, the penalties shall not be imposed or if imposed, shall be abated by the Clerk. In order to demonstrate a lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control.

“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 was discovered.

“Events beyond the taxpayers 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 taxpayers reasonable reliance in good faith upon erroneous written information from the Clerk who was aware of the relevant facts relating to the taxpayer’s business when he provided the erroneous information.

(e) Interest shall be charged on the late payment of the tax from the due date until the date paid at the rate set by Section 6621 of the Internal Revenue Code, 1954, as amended or ten percent annually whichever is greater, without regard to fault or other reason for the late payment. Whenever an assessment of additional or omitted tax 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 imposed hereunder 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 rate of interest established by Section 6621 of the Internal Revenue Code, 1954, as amended, or ten percent annually, whichever is greater.

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 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.

Section 7.1-17 RESERVED

Section 7.1-18 ESTIMATES FOR DETERMINING TAX FOR BEGINNERS.

Every person beginning a business on or after January 1 of any year shall pay the fee required to obtain a license, which Fee is set at \$30.00.

Section 7.1-19 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 Clerk 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 Section 58.1-3903, Virginia Code, the Clerk shall assess the local license 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 Section 58.1-3940, (Virginia Code), two years after the date of assessment if the period for assessment has been extended pursuant to this subdivision of this ordinance, two years after the final determination of an appeal for which collection has been stayed pursuant to subdivision Sb or Sd of this ordinance, or two years after the final decision in a court application pursuant to Section 58.1-3984, Virginia Code, or similar law for which collection has been stayed, whichever is later.

Section 7.1-20 SITUS.

Section 7.1-20(1) 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 classification of business shall be attributable 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 Section 58.1-3715, Virginia Code.
- (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 Virginia 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 between the definite places 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. The Clerk 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 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. If an agreement cannot be reached, either the Clerk or taxpayer may seek an advisory opinion from the Virginia Department of Taxation pursuant to Section 58.1-3701, Virginia Code; notice of the request shall be given to the other party.

Section 7.1-22 DISPLAY OR CARRYING OF LICENSE.

- (a) The license for or sign issued to show payment of the license taxes imposed by any section of this chapter shall be displayed in a conspicuous place at the regular place of business of the licensee and shall be produced by the licensee on the request of any authorized enforcement officer of the town.
- (b) Any licensee who maintains no regular place of business shall carry, on or about his person, the license form or sign issued to show payment of the license tax, which license form or sign shall be produced by the licensee on request of any authorized enforcement officer of the town.
- (c) Notwithstanding the above provisions of this section, no license measured by volume of business shall be required to be displayed publicly.

Section 7.1-23 LICENSE DEEMED PERSONAL PRIVILEGE; TRANSFER.

- (a) Every license issued under this chapter shall be deemed to confer a personal privilege to transact, carry on or conduct the business, profession, trade, or occupation in the town, and such privilege shall not be exercised except as authorized in this section, shall be invalid and shall not relieve the transferee from the obligation of procuring a license in accord with the provisions of this chapter.
- (b) A license issued under this chapter shall be transferable, except where provided otherwise, only where the business for which the license was issued has been sold or disposed of, but is to be continued by the purchaser or transferee at the same or at some other location within the town. In no case shall the license transfer be legal or valid unless and until notice in writing is given to the

town clerk. Such notice shall contain the name, trade name, if any, and the address of the proposed transferor and transferee, the proposed new location, if any, and the time of the proposed transfer. Failure to notify the town clerk of the transfer of the license, within thirty (30) days after such transfer, shall invalidate such license. The town clerk shall give written approval of the transfer, if such transfer is approved.

- (c) If the transferor's license for the current license year has been based on an estimate of gross receipts or gross expenditures, the transferor shall reveal his gross receipts or gross expenditures for the period he was in business during the current license year and, if the accumulation of gross receipts shall be required to amend the license by the time between the day of beginning business and the end of the current license year.
- (d) The town clerk shall collect ten dollars (\$10.00) for each license transfer, which sum shall be used to pay administrative costs incurred by reason of such transfer.
- (e) The town clerk shall keep a record of all license transfers.
- (f) No person shall transfer or attempt to transfer a license contrary to the provisions of this section.

Section 7.1-24 EXCLUSIONS AND DEDUCTIONS FROM GROSS RECEIPTS.

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

A. The Following items are excluded:

1. Amounts received and paid to the United States, the Commonwealth or any country, city or town for the Virginia retail sales and use tax, for any local sales tax or any local excise tax on cigarettes, for any federal or state excise tax 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 recipient assigns to the licensee in consideration of the sale 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 purposes other than sale or distribution and 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 business subject to a licensure 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 times 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.
- B. The following shall be deducted from gross receipts or gross purchases that would otherwise be taxable.
1. Any amount paid for computer hardware and software that are sold to a United States federal or state government entity provided that such property was purchased within two years of the sale to said entity by the original entity by the original purchaser who shall have been contractually obligated at the time of purchase to resell such property to a state or federal government entity. This deduction shall not occur until the time of resale and shall apply to only the original cost of the property and not to its resale price, and the deduction shall not apply to any of the tangible personal property which was the subject of the original resale contract if it is not resold to a state or federal government entity in accordance with the original contract obligation.
 2. Any receipts attributable to business conducted in another state or foreign country in which the taxpayer liable for an income or other tax based upon income.

Section 7.1-25 CONTRACTING.

Section 7.1-25.1 RATE.

The rate for a local license tax imposed upon a person engaged in contracting and persons constructing for their own account for sale is ten cents per one hundred dollars of gross receipts. The first \$30,000.00 of gross receipts of contracting businesses are exempted from taxation.

- A. A person shall be classified as a contractor if he regularly performs, or engages others to perform, any of the work described in paragraph B of §58.1-3714 on buildings, structures, or real estate (i) owned by him when the buildings, structures, or real estate will be offered for sale upon completion of such work; or (ii) owned by others.
- B. Contractors include persons who subdivide and improve real estate, and speculative builders who build houses or other buildings with the intention to offer the subdivided lots or completed buildings for sale. A person who would otherwise be classified as a contractor shall not lose such classification because real estate is temporarily leased until it can be sold, or leased with an option to purchase instead of sold, unless the leasing activity constitutes a separate licensable business. Any gross receipts from such leases shall be considered ancillary to the business of contracting.
- C. The mere subdivision of land into lots, without more, is not contracting. However, a person who installs water or sewer systems, roads, or engages in any others activity described in subsection B of §58.1-3714 on his own land with the intent to offer the land for sale is a contractor regardless of whether the land is subdivided.

- D. A person shall not be deemed to be engaged in the business of contracting solely because he acts as his own prime contractor to build or improve a building which he intends to occupy as his residence, office, or other place of business, or actually so occupied within a reasonable time prior to the sale of the premises.

Section 7.1-25.2 LIST OF OCCUPATIONS.

Contracting generally includes, but is not limited to, persons engaged in the following occupations, businesses or trades:

Air-conditioning
Brick contracting and other masonry
Building
Cementing
Dredging
Electrical contracting
Elevator installation
Erecting signs which are assessed as realty
Floor scraping or finishing
Foundations
House moving
Paint and paper decorating
Plastering
Plumbing, heating, steamfitting
Refrigeration
Road, street, bridge, tunnel, sidewalk, or curb and gutter construction
Roofing and tinning
Sewer drilling and well digging
Sign painting
Structural metal work
Tile, glass, flooring and floor covering installation
Wrecking, moving, or excavating

Section 7.1-25.3 INSTALLATION BY MERCHANT.

A merchant shall not be deemed to be a contractor solely because he delivers and installs an appliance or other merchandise he sells when the installation uses existing openings and connections. If, however, the installation requires making openings in a wall, running ductwork, wires, or plumbing, or any other work described in paragraph B of §58.1-3714, then the installation work may be deemed contracting. The following are examples of the application of this paragraph:

- A. A merchant engaged in the business of selling and erecting or erecting tombstones is not a contractor solely because he places or erects the tombstone on a gravesite, but is engaged in either retail or wholesale sales.
- B. While a person engaged in the business of wrecking or demolishing a building is a contractor, the subsequent sale of the materials after they have been separated, cleaned, graded, etc. may be classified as either retail or wholesale sales. However, bulk sales of such material from the demolition site may be classified as ancillary to the demolition contract.
- C. A person who merely sells a prefabricated building or structure is not a contractor, but if the person or a subcontractor for that person erects the building or structure, then the seller is a

contractor.

- D. A merchant who sells floor coverings (whether the covering be carpet, linoleum, tile, or other covering) and installs the floor covering as part of or incidental to the sale, then the transaction is not contracting but a retail or wholesale sale. The fact that the purchaser is a general contractor or other institutional, commercial, or industrial entity, coupled with the quantity sold and other terms, may affect the classification of the sale as a wholesale rather than retail sale. A person who has no inventory of floor coverings from which sales are regularly made would not be classified as a merchant. A person other than a merchant who enters into a contract to install floor coverings would be classified as a contractor, whether the contract is for installation only or sale and installation.
- E. The mere hauling of sand, gravel, and dirt excavated by another is not contracting but is a business service.
- F. Soliciting business for a contractor is not contracting but is a business service.

Section 7.1-26 RETAIL AND WHOLESALE SALES.

Section 7.1-26.1 RATES.

The rate for a local license tax imposed on a person engaged in retail sales is twelve cents per one hundred dollars of gross receipts. The first \$25,000.00 of gross receipts for wholesalers are exempted. The rate for a local license tax imposed on a person engaged in wholesale sales is five cents per one hundred dollars of gross receipts. The first \$25,000.00 of gross receipts for retailers are exempted from taxation.

Section 7.1-26.2 RETAIL AND WHOLESALE DISTINGUISHED.

The sales price alone is not determinative of whether the sale is at retail or wholesale. The fact that a person sells goods, wares, or merchandise at wholesale prices, at cost or at less than cost does not prevent the person from being classified as a retail merchant if the sales fall within the definition of a retail sale.

Section 7.1-26.3 BANKS.

Banks are generally exempt from local license tax, but §58.1-1202 specifically authorized localities to subject banks to local license tax on the sale of blank checks, repossessed automobiles, and any other tangible personal property sold by banks in connection with promotions or otherwise. In connection with the sale of blank checks:

- A. A bank is not engaged in retail sales if the customer places an order for the checks directly with the printer and authorizes the bank to collect for the printer by charging his account, and the bank is not obligated to pay for the checks except insofar as it honors the customer's authorization.
- B. A bank is engaged in retail sales if the customer places his order with the bank, and the bank contracts with the printer and is liable to the printer, whether or not the bank actually collects from the customer.

Section 7.1-26.4 SOLICITATION.

A person is not subject to a local license tax if his business in this state is limited solely to the

solicitation of orders by catalogs mailed from outside this state to mail-order buyers in this state and who fills orders from outside the state. However, if the catalogs are distributed by a Virginia resident by mail or in person or if the person engaged in the mail-order business has a definite place of business in this state at which mail orders are received or filled, the mail order business may be treated the same as any other retail or wholesale business for purposes of local license taxes.

Section 7.1-26.5 COMMISSION MERCHANT.

Any person who sells goods at retail through a commission merchant, as defined in §58.1-3732, may be held liable for a local license tax as to such sales even though the commission merchant may also be taxable with respect to a commission on such sales.

Section 7.1-26.6 OTHER MERCHANTS.

Any person who purchases rough stone already cut and who then polishes, glazes, and cuts lettering in the stone is not a manufacturer and is engaged in either retail or wholesale sales.

Section 7.1-26.7 NON-MERCANTILE BUSINESSES.

A job printer is a manufacturer and is engaged in either retail or wholesale sales as to the sales of the items printed.

Section 7.1-26.8 MOTOR VEHICLE DEALERS.

The Town requires any motor vehicle dealer who separately states the amount of local license tax applicable to a sale and collects it from the customer to treat such taxes collected as held in trust for the locality and requires that all such sums collected be paid over to the locality quarterly during the license year. Gross receipts on which the tax has been separately stated, collected and paid over shall be excluded from other taxable gross receipts when the annual license is obtained. The failure of a dealer to collect such tax from the purchaser shall not relieve such dealer from the obligation to pay such tax to the town.

Section 7.1-26.8(1) LIMITATION ON MOTOR VEHICLE DEALER.

A motor vehicle dealer's gross receipts for license tax purposes shall not include the amount of a trade-in, when such trade-in was accepted as part of a sale of a motor vehicle.

Section 7.1-27 FINANCIAL, REAL ESTATE, AND PROFESSIONAL SERVICES.

Section 7.1-27.1 RATE.

The rate for local license taxes imposed on a person engaged in a financial, real estate, or professional service is twenty-three cents per one hundred dollars of gross receipts. The first \$13,000.00 of gross receipts of such businesses are exempted from taxation.

Section 7.1-27.2 FINANCIAL SERVICE.

Section 7.1-27.2(1) DEFINITIONS.

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 is providing a financial service, unless such service is specifically provided for under another section of

these guidelines.

“Broker” for purposes of this classification means an agent of a buyer or a seller who buys or sells stocks, bonds, commodities, or services, usually on a commission basis.

“Commodity” for purposes of this classification means staples such as wool, cotton, etc. which are traded on a commodity exchange and on which there is trading in futures.

“Dealer” for purposes of this classification means 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.

“Security” for purposes of this classification shall have the same meaning as in the Securities Act (~13. 1-501 et seq~) of the Code of Virginia, or in similar laws of the United States regulating the sale of securities.

Section 7.1-27.2(2) LIST OF OCCUPATIONS.

Those engaged in rendering financial services include, but are not limited to, the following:

- Buying installment receivables
- Chattel mortgage financing
- Consumer financing
- Credit car services
- Credit Unions
- Factors
- Financing accounts receivable
- Industrial loan companies
- Installment financing
- Inventory financing
- Loan or mortgage brokers
- Loan or mortgage companies
- Safety deposit box companies
- Security and commodity brokers and services
- Stockbroker
- Working capital financing

Section 7.1-27.2(3) BUYING FOR ANOTHER.

Any person other than a national bank or bank or trust company organized under the laws of this state, or duly licensed or practicing attorney at law, that engages in the business of buying or selling for others on commission or for other compensation, shares in any corporation, bonds, notes, or other evidences of debt is a stockbroker. The fact that orders are taken subject to approval by a main office does not relieve the broker from local license taxation.

Section 7.1-27.2(4) BANKS.

Although they render financial services;

- A. banks and trust companies subject to the Virginia bank franchise tax are exempt from local license tax by §58.1-1202 (Virginia Code) except as to sales of tangible personal property; and

B. federal credit unions are exempt under the Federal Credit Union Act, 12 U.S.C.A. § 1768.

Section 7.1-27.2(5) SAVINGS INSTITUTIONS: AND STATE CHARTERED CREDIT UNIONS.

A local license tax of \$50.00 is imposed on savings and loan companies or credit unions. This fee is due only on savings and loan companies or credit unions when their main office is located in the Town. There is no fee for the issuance of such license.

Section 7.1-27.2(6) INDUSTRIAL LOAN ASSOCIATIONS AND AGRICULTURAL CREDIT ASSOCIATIONS.

The license tax on industrial loan associations or any agricultural credit association created pursuant to the Agricultural Credit Act of 1987 shall be \$500.00. There is no fee for the issuance of such license.

Section 7.1-27.3 REAL ESTATE SERVICE.

Section 7.1-27.3(1) RESERVED.

Section 7.1-27.3(2) LIST OF OCCUPATIONS.

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

- Appraisers of real estate
- Escrow agents, real estate
- Fiduciaries, real estate
- Lessors of real property
- Real estate agents, brokers, and managers
- Real estate selling agents
- Rental agents for real estate

Section 7.1-27.3 (3) LIMITATION ON GROSS RECEIPTS - REAL ESTATE BROKERS

Gross receipts for real estate brokers shall not include amounts received by the broker which arise from real estate sales transactions to the extent that such amounts are paid to a real estate agent as a commission on any real estate sale transaction and the agent is subject to the business license tax on such receipts. The broker claiming the exclusion shall identify on the license application each agent to whom the excluded receipts have been paid and the jurisdiction in the Commonwealth of Virginia to which the agent is subject to business license taxes.

Section 7.1-27.3 (3) LIMITATION ON GROSS RECEIPTS - REAL ESTATE BROKERS

- A. 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
- B. A “professional exterminator” is classified as repair, business, and personal services because he is offering an exterminating service even though he may be very experienced, expert and knowledgeable in the subject. On the other hand, a biologist or sanitarian who does not provide extermination services but advises as to procedures (among which may be extermination services), equipment, and other measures to avoid contamination by viruses, bacteria, chemicals, insects, rodents, and the like may be considered a professional.
- C. Services which are not considered professional services may be offered in connection with professional services and be considered ancillary. For example, tax preparation services generally

are not professional services, while rendering advice concerning the tax consequences of completed or contemplated transactions would be a professional service. Professionals who specialize in tax matters may prepare returns as well as render advice, and the tax preparation service would be ancillary to the professional service.

- D. The term “management consulting” does not convey enough information about the service offered to determine the proper classification. Services which assist the business in the conduct of its day to day operations would generally not be considered professional. For example, payroll services, marketing surveys, and cash management, are all services that would not properly be classified as professional services.

Section 7.1-27.3 (3) LIMITATION ON GROSS RECEIPTS - REAL ESTATE BROKERS

- A. Certification as a professional by itself is not sufficient to establish liability for local license taxation because many individuals may maintain their professional certification even though they are not practicing their profession. The business may not be classified as professional unless it is offering professional services to the public for compensation.
- B. Gross receipts for purposes of local license taxation as a professional include only those gross receipts obtained from the practice of that profession as a business (including any ancillary or de minimis receipts), 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.

Section 7.1-27.3 (3) LIMITATION ON GROSS RECEIPTS - REAL ESTATE BROKERS

Those engaged in rendering a professional service include, but are not limited to, the following:

Architects
Attorneys-at-Law
Accountants
Certified public accountants
Dentists
Engineers
Land surveyors
Practitioners of the healing arts (the art of science or group of arts or sciences dealing with the prevention, diagnosis, treatment and conditions, diseases, pain or infirmities)
Surgeons
Veterinarians

Section 7.1-27.4(3) CONSULTING.

The terms “professional”, “consultant”, and “consulting” imply that the person possesses education, experience, and expertise in the subject matter of the service offered. However, the proper classification under the local ordinance and state law depends on the nature of the service offered, not the professed expertise of the person offering the service. The performance of services dealing with the conduct of business itself, including the promotion of sales or services of such business, does not constitute the practice of a profession, even though the services involve the application of a specialized knowledge. For example:

- A. An inexperienced lawyer offering legal services to the public is classified as a professional

because qualifying as a lawyer requires a prolonged course of specialized instruction and study, and legal services are generally considered professional services whether the practice be on a full or part-time basis, and without regard to the legal form of the business entity.

Section 7.1-27.4(5) OTHER SERVICES.

Other services not clearly identified as financial, real estate, or professional are classified as “repair, personal, business, and other services” under § 6.

Section 7.1-28 REPAIR, PERSONAL, BUSINESS, AND OTHER SERVICES; OTHER BUSINESSES

Section 7.1-28.1 RATE.

The rate for a local license tax imposed upon a person engaged in provided for compensation any repair, personal, business, or other services not specifically classified as “financial, real estate, or professional service” under Section 7.1-27 of this Ordinance, or engaged in any other business or occupation not specifically classified in this ordinance or otherwise exempted from this local license tax is twenty-three cents per one hundred dollars of gross receipts. The first \$13,000.00 of gross receipts on such businesses are exempted from taxation.

Section 7.1-28.2 LIST OF OCCUPATIONS.

Those rendering a repair, personal, or business service or other service as provided in subsection A include, but are not limited to, the following:

- Advertising agencies
- Airports
- Ambulance services
- Amusements and recreation services
- Animal hospitals, grooming services, kennels or stables
- Auctioneers and common criers
- Automobile driving schools
- Barber shops, beauty parlors, and hairdressing establishments, schools & services
- Billiard or pool establishments or parlors
- Boat landings
- Bondsman
- Booking agents or concert managers
- Bowling alleys
- Brokers and commission merchants other than real estate or financial brokers
- Business and governmental research and consulting services
- Chartered clubs
- Child care attendants or schools
- Collection agents or agencies
- Commercial photography, art, and graphics
- Court reporting and public stenographers
- Dance studios and schools
- Data processing, computer and systems development services
- Developing or engaging photographs
- Detective agency and protective services

Drafting services
Employment agencies
Engraving
Erecting installing, removing, or storing awnings
Extermination services (unless the services involve performing functions defined as contracting under subsection B of §58.1-3714)
Ferrier or blacksmith
Freight traffic bureaus
Fumigating or disinfecting
Funeral services and crematories
Golf courses, driving ranges and miniature golf courses
Hauling of sand, gravel or dirt (excavated by others)
Home for adults (licensed by Department of Social Services)
Hospitals, profit or nonprofit
Hotels, motels, tourist courts, boarding and rooming houses and transient trailer parks and campsites
House cleaning supplies 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 carpet and upholstery cleaning
Mailing, messenger and correspondent services
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
Pawnbrokers
Personnel services, labor agents and employment bureaus
Photographers and photographic services
Piano tuning
Picture framing and gliding
Porter services
Press clipping services
Professional sports (i.e., commercial rather than amateur)
Promotion agents or agencies
Public relations services
Realty multiple listing services
Renting or leasing any items of tangible personal property
Reproduction services
Research and development laboratories
Secretarial services
Septic tank cleaning
Shoe repair, shoe shine and hat repair shops
Sign painting (unless the painting services involve performing functions defined as contracting under subsection B of §58.1-3714)
Storage--all types
Swimming pool maintenance and management

Tabulation services
Tax preparers (other than professionals described in § 5.4
Taxicab companies
Taxidermist
Telephone answering services
Temporary employee services
Testing laboratories
Theaters
Theatrical performers, bands and orchestras
Towing services
Transportation services including buses and taxis
Travel agencies
Tree surgeons, trimmers and removal services
Trucking companies, intrastate
Wake-up services
Washing, cleaning, or polishing automobiles

Section 7.1-28.3 COMMISSION MERCHANT.

A commission merchant as defined in § 58.1-3733 (Virginia Code) is deemed to be providing a service to the manufacturer or merchant for whom he sells. The commission merchant's commission income may be subject to tax under this classification, however, the commission merchant's sales are not chargeable to such merchant.

Section 7.1-29 ITINERANT VENDOR.

The annual license tax on itinerant vendors conducting business within this town shall be \$500.00, which shall not be refundable or prorated. There is no fee for the issuance of such license.

Section 7.1-30 PEDDLERS.

The annual license on peddlers conducting business within this town shall be \$500.00, which shall not be refundable or prorated. There is no fee for the issuance of such license.

Section 7.1-31 RESERVED.

Section 7.1-31 Special Events (Approved and adopted April 6, 2006.)

(a) Notwithstanding any other provision hereof to the contrary, any person may apply to the Town of Floyd for a license to sell retail or wholesale goods, wares or other merchandise for any Special Event which is duly authorized to be conducted in the Town of Floyd. A Special Event shall be defined as an organized celebration with planned activities, which is of a limited duration, and which is organized for the purpose of promoting such event. A Special Event may last no more than four (4) consecutive days in duration, and be held not more than two (2) times in any year. It shall be unlawful for any person to store, keep, display or offer or show for sale any goods, wares, or other merchandise or property in the Town during a Special Event unless a permit authorizing the selling of such goods, wares or merchandise is obtained from the town in accordance with this section.

(b) The town manager is authorized to issue a permit allowing a person who otherwise does not have a valid business license required hereunder to store, keep, display or offer or show for sale any goods, wares or other merchandise of such person during a Special Event.

(c) Such a permit may be issued upon an application made at least seven days in advance of the Special Event. The application must contain the name, address, tax payer identification number and telephone number of the applicant, together with a list of all employees of the applicant, the location where the goods, wares or other merchandise are to be sold, and the types of goods, wares or other merchandise to be sold. Such applicant will be charged a fee in advance of \$10.00 per day for each day that the applicant shall apply to sell his or her goods, wares or other merchandise at such Special Event; provided, however, that no such person shall be allowed such permit for more than four (4) consecutive days nor for more than ten (10) total days in any year; and provided further, that only one applicant shall be permitted to operate under one permit.

(d) Each permit may contain reasonable restrictions so that the streets, sidewalks and other public property are not obstructed and so that public safety is not at risk. All activities conducted pursuant to the permit must take place on private property; no portion of any public sidewalk or public street or public property may be used for the selling of such goods, wares or merchandise, unless expressly allowed in such permit.

(e) The town authorizes the town manager to cancel any permit for failure of any applicant, participant or employee to abide by the terms of the permit or where the cancellation is reasonably necessary for public safety and general welfare. In addition, the town manager may not issue a permit if public safety and general welfare may be jeopardized as a result of the issuance of the permit, or if any part of the planned activities are in violation of the town's ordinances.

Section 7.1-32 TAXICABS.

The annual license tax on taxicabs operating within the town shall be \$20.00 per taxicab. There is no fee for the issuance of such license.

Section 7.1-33 AMUSEMENT OPERATORS.

(a) As used herein the term "amusement operator" means any person, firm, or corporation selling, leasing, renting, or otherwise furnishing or providing a coin-operated amusement machine in the town; provided, however, that such term shall not include a person owning less than three (3) such machines and operating such machines on property owned or leased by such person.

(b) As used herein the term "amusement machine" shall mean any coin operated machine other than weighing machines, automatic baggage or parcel-checking machines or receptacles, machines that are constructed as to do nothing but vend goods, wares and merchandise, postage stamps, machines providing services only, viewing photomat machines providing rides to children, or machines for the delivery of newspapers.

(c) There is hereby imposed an annual license tax of \$200.00 upon any amusement operator for the operation of ten (10) or more coin-operated amusement machines located within the town. There is hereby imposed an annual license tax at the rate of \$20.00 per machine upon any amusement operator for the operation of less than ten (10) coin-operated amusement machines located within the town.

(d) There is no fee for the issuance of such license.

Section 7.1-34 HEAT, LIGHT, POWER, AND GAS COMPANIES.

All persons furnishing heat, light, power, and gas for domestic commercial and industrial consumption in the town shall pay, for the privilege, an annual license tax equal to one-half of one percent of the gross receipts of such business derived from sales to the ultimate consumer from within the town during the preceding calendar or fiscal year. There is no fee for the issuance of such license.

Section 7.1-35 TELEPHONE COMPANIES.

All persons engaged in the business of providing telephonic communications in the town shall pay, for the privilege, an annual license tax equal to one-half of one percent of the gross receipts of such business derived from sales to the ultimate consumer from within the Town during the preceding year from local telephone exchange service, including flat rate service and message rate service, but excluding long distance telephone call charges. There is no fee for the issuance of such license.

Section 7.1-36 CABLE TELEVISION SERVICE.

All persons furnishing cable television service shall pay for the privilege, an annual license tax of \$500.00. There is no fee for the issuance of such license.

Section 7.1-37 MISCELLANEOUS CLASSIFICATIONS

Section 7.1-37.1 MANUFACTURERS.

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

- A. The Code of Virginia does not define the term “manufacturer” for purposes of the local business license tax. The courts, however, have developed a liberally applied test involving three essential elements in determining when a person is a manufacturer:
 1. The original material; and
 2. A process whereby the original material is changed; and
 3. A resulting product which, by reason of being subjected to processing, is different from the original material.
- B. Mere manipulation or rearrangement of the original materials is not sufficient; there must be a substantial, well-signalized transformation in form, usability, quality and adaptability rendering the original material more valuable for use than it was before. Merely processing, blending, grading, etc. material is not manufacturing.
- C. The assembly of purchased components may or may not constitute manufacturing. Routine assembly generally is not manufacturing. For example, if components are sold separately and assembly is offered as an option to the purchaser, the assembly is a service (which may or may not be ancillary to the sale of the component, or de minimis). When evaluating the facts and circumstances to determine if a business is engaged in manufacturing, factors which suggest that assembly is not a separate service but part of a manufacturing process include, but are not limited

to, any one or more of the following:

- (i) The assembly process is complex and uses numerous parts.
 - (ii) After assembly the components cannot be recognized without previous knowledge.
 - (iii) The components are not readily usable for any purpose other than incorporation into the finished product.
- D. Engineering, design, research and development, and computer software development typically are not manufacturing. However, the actual production of tangible products based on engineering, design, research and development can be manufacturing. For example:
- (i) While the development of computer software is not manufacturing, the production of boxes containing the software on disks and related instruction manuals may be manufacturing;
 - (ii) While the design of computer hardware components is not manufacturing, then production of such components may be manufacturing;
 - (iii) While the design and engineering of specialized tools, dies, and machinery is not manufacturing, the production of even a single tool, die, or machine may be manufacturing.
- E. Not every person engaged in some manufacturing is classified as a manufacturer. The manufacturing component of the business must be a substantial (i.e., not incidental or inconsequential) portion of the business. The factors that may be considered in determining whether the manufacturing component of a multi-purpose business makes a substantial contribution to the entire business include, but are not limited to, any one or more of the following:
- (i) The manufacturing component's financial receipts or proportion of total corporate income;
 - (ii) The percentage that manufacturing equipment, inventory, etc. comprises of the total capital investment;
 - (iii) The ratio of manufacturing activities to the entire business. For example, if a developer of very complex custom software produces only a few copies of disks and manual after completing the program, the production is unlikely to be considered a substantial portion of the business. On the other hand, if employees are engaged in the mass production of boxes, disks, and manuals for software, then the production process may be considered a substantial portion of the business. Gross receipts that are ancillary to a manufacturer's sales at wholesale at the place of manufacture are also exempt even though the receipts may be attributable to activities at another location, e.g., interest on an installment sale or charge account may be received at a location other than the place of manufacture and sale at wholesale.

Section 7.1-38 APPEALS AND RULINGS.

- A. 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 relevant facts relevant to the taxpayer's contention. The Clerk 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. The Clerk shall undertake a full review of the taxpayer's claims and issue a determination to the taxpayer setting forth his 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 Town (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 Clerk, unless the Clerk 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 Section 7.1-16(e) of this ordinance, 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 desire 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. Any person assessed with a local license tax as a result of an audit may apply with ninety days of the determination by the Clerk on an application pursuant to Section 7.1-38(A) hereof to the Tax Commissioner of Virginia for a correction of such assessment. Such Tax Commission shall issue a determination to the taxpayer within ninety days of receipt of the taxpayer's application, unless the taxpayer and the Clerk are notified that a longer period will be required. The application shall be treated as an application pursuant to Section 58.1-1821, (Virginia Code), and the said Tax Commissioner may issue an order correcting such assessment pursuant to Section 58.1-822, (Virginia Code). However, the burden shall be on the party making the application to show that the ruling of the said Tax Commissioner is erroneous. Neither the said Tax Commissioner nor the Virginia 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, as described herein, the Clerk shall further suspend collection activity until a final determination is issued by the Tax Commissioner unless the Clerk 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 Section 7.1-16(e) of this ordinance, 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 7.1-38(B) above.
- E. Any taxpayer may request as written ruling regarding the application of a local license tax to a specific situation from the Clerk. 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 situations 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 Virginia Department of Taxation upon the ruling was based or (ii) the Clerk 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.

Section 7.1-39 EFFECTIVE DATE.

This Chapter 7 shall be effective and applicable to assessments made on or after January 1, 1997, even if for an earlier license year, except that the provisions permitting an assessment of license tax for up to

six preceding years in certain circumstances shall not be construed to permit the assessment of tax for a license year beginning prior to January 1, 1997.

Section 7.2 FOOD VENDOR LICENSE

Section 7.2-01 DEFINITIONS. The following words and phrases, when used in this ordinance, shall have, for the purpose of this ordinance, the following respective meanings except where the context clearly indicates a different meaning:

- A. Food Vendor. Person, firm, or corporation who shall engage in, do or transact any temporary or transient food business within the limits of the Town, of the sale of food or merchandise and who for the purpose of carrying on such business shall hire, lease, use or occupy any building or structure, motor vehicle, lunch wagon or truck, pushcart, tent, car, boat, or other mobile facility from which food is sold or public room or any part thereof, including rooms in hotels, lodging houses, or private home, or in any street, alley, or other public place, or in any public road, for the exhibition of or sale of such food or merchandise.
- B. Itinerant Food Vendor. A food vendor who is operational in the Town of Floyd for a period of less than 6 months out of a 12 month period.
- C. One Time Food Vendor. A food vendor who is operational in the Town of Floyd once (1) in a 6 months period.
- D. Permanent Food Vendor. A food vendor who has a lasting or continuous place of business, on a parcel of property, which is either owned or leased on a permanent or semi-permanent basis and is operational in the Town of Floyd at least 6 months (180 days) out of a 12 month period.

Section 7.2-02 PERMANENT FOOD VENDOR.

- A. Requirements. A permanent food vendor shall hold a valid Business License in accordance with The Town of Floyd Code §7.1-10, supply a valid license of certification from the State Health Department and comply with the Meals Tax Ordinance in the Town of Floyd Code §16.2.
- B. Fees. No additional fees are required.

Section 7.2-03 ITINERANT FOOD VENDOR.

- A. Requirements. An itinerant food vendor shall apply for a Food Vendor License, shall hold a valid Business License in accordance with The Town of Floyd Code §7.1-10, supply a valid license certificate from the State Health Department and comply with the Meals Tax Ordinance in the Town of Floyd Code §16.2.
- B. Fees. The fee for issuing a license under this section shall be Fifty (\$50.00) Dollars per license in either 6 month period (January 1st to June 30th or July 1st to December 31st). Owner(s) of the private property in which the permitted vendor operates will be responsible for all licensing fees and applicable taxes the permitted vendors fails to pay.
- C. Exemptions. Non-profit organizations are exempt from all licensure fees under this Section.

Section 7.2-04 ONE TIME FOOD VENDOR.

- A. Requirements. A one time food vendor shall apply for a Food Vendor License, shall hold a valid Business License in accordance with The Town of Floyd Code §7.1-10, supply a valid license certificate from the State Health Department and comply with the Meals Tax Ordinance in the Town of Floyd Code §16.2.

- B. Fees. The fee for issuing a license under this section shall be Fifty (\$50.00 Dollars per license per event. Owner(s) of the private property in which the permitted vendor operates will be responsible for all licensing fees and applicable taxes the permitted vendor fails to pay.

Section 7.2-05 SPECIAL CIRCUMSTANCES.

- A. Requirements. Applications for Special Circumstances, such as short of long term contracts, shall be submitted to the Town Manager, who shall refer the application to the Floyd Town Council. The Floyd Town Council will make a decision on the application and any applicable fees. (Ex. Organization or Landowner sponsoring multiple events over a period of time).