



NOTICE OF RIGHT TO APPEAL AND PROCEDURES

LOCAL LICENSE TAX

Definition of an "appealable event": an "appealable event" means

- an increase in the assessment of a local license tax payable by a taxpayer,
- the denial of a refund, or
- the assessment of a local license tax where none previously was assessed, arising out of the Commissioner of the Revenue's:
 - (i) examination of records, financial statements, books of account, or other information for the purpose of determining the correctness of an assessment;
 - (ii) determination regarding the rate or classification applicable to the licensable business;
 - (iii) assessment of a local license tax when no return has been filed by the taxpayer; or
 - (iv) denial of an application for correction of erroneous assessment attendant to the filing of an amended application for license.

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

ADMINISTRATIVE APPEAL TO THE COMMISSIONER OF THE REVENUE

Filing an appeal: Any person assessed with a local license tax as a result of an appealable event may file an administrative appeal of the assessment within one year from the last day of the tax year for which such assessment is made, or within one year from the date of the appealable event, whichever is later, with the Commissioner.

An appeal can be submitted via email, letter, or by using either "Application for Review (Appeal) – Local Business Taxes Only" on the Commissioner's website under "Forms & Applications" at www.fcva.us/cor.

The appeal should be mailed to:
Commissioner of the Revenue - Appeal
PO Box 552
Winchester VA 22604

The appeal must be filed in good faith and sufficiently identify the taxpayer, the tax periods covered by the challenged assessments, the amount in dispute, the remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention.

Process: The Commissioner may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, an audit or further audit, or other evidence deemed necessary for a proper and equitable determination of the appeal. The assessment placed at issue in the appeal shall be deemed prima facie correct. The Commissioner will review the taxpayer's claims and issue a written determination to the taxpayer setting forth the facts and arguments in support of her decision.

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

Suspension of collection activity during appeal: Provided a timely and complete administrative appeal is filed, collection activity with respect to the amount in dispute relating to any assessment by the Commissioner will be suspended until a final determination is issued by the Commissioner, unless the Treasurer (i) determines that collection would be jeopardized by delay as defined in this section; (ii) is advised by the Commissioner that the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) is advised by the Commissioner that the appeal is frivolous as defined in the Code of Virginia (hereinafter the "Code"). Interest will accrue in accordance with the provisions of the Code, but no further penalty will be imposed while collection action is suspended.

Procedure in event of non-decision: Any taxpayer whose administrative appeal to the Commissioner pursuant to the provisions of this section has been pending for more than one year without the issuance of a final determination may, upon not less than 30 days' written notice to the Commissioner, elect to treat the appeal as denied and appeal the assessment or classification of the taxpayer's business to the Tax Commissioner in accordance with the provisions of Code. The Tax Commissioner will not consider an appeal filed pursuant to the provisions of this subsection if he finds that the absence of a final determination on the part of the Commissioner was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the Commissioner to make her determination.

Rulings: Any taxpayer or authorized representative of a taxpayer may request a written ruling regarding the application of a local license tax to a specific situation from the Commissioner. Any person requesting such a ruling must provide all facts relevant to the situation placed at issue and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. In addition, the taxpayer or authorized representative may request a written ruling with regard to the classification applicable to the taxpayer's business, including whether the business properly falls within a business license subclassification established by the locality. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request will invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if (i) there is a change in the law, a court decision, or the guidelines issued by the Department of Taxation upon which the ruling was based or (ii) the Commissioner notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling which later becomes invalid will be deemed to have acted in good faith during the period in which such ruling was in effect.

ADMINISTRATIVE APPEAL TO THE VIRGINIA STATE TAX COMMISSIONER

Filing an appeal: Any person assessed with a local license tax as a result of a determination or that has received a determination with regard to the person's appeal of the license classification or subclassification applicable to the person's business, upon an administrative appeal to the Commissioner of the Revenue pursuant to the Code, that is adverse to the position asserted by the taxpayer in such appeal may appeal such assessment or determination to the Tax Commissioner within 90 days of the date of the determination by the Commissioner. Taxpayers intending to appeal an assessment should immediately provide a written Notice of Intent to Appeal to the Commissioner to stop collection activity.

The appeal will be in such form as the Tax Commissioner may prescribe (see website at www.tax.virginia.gov) and must be sent to:

Tax Commissioner
PO Box 1880
Richmond VA 23218

The taxpayer must also serve a copy of the appeal upon the Commissioner. If the appeal is incomplete, taxpayer is informed and given 30 days to complete it. The Tax Commissioner permits the Commissioner to participate in the proceedings, and will issue a determination to the taxpayer within 90 days of receipt of the taxpayer's application, unless the taxpayer and the Commissioner are notified that a longer period will be required. The appeal will proceed in the same manner as an application pursuant to § 58.1-1821 of the Virginia Code, and the Tax Commissioner pursuant to § 58.1-1822 may issue an order correcting such assessment or correcting the license classification or subclassification of the business and the related license tax or fee liability.

Withdrawal of an appeal: The taxpayer may withdraw the appeal to the Tax Commissioner by making such a request in writing any time prior to the issuance of the Tax Commissioner's final determination. The taxpayer must mail a copy of the request to withdraw the appeal to the Commissioner.

Suspension of collection activity during appeal: On receipt of a notice of intent to file an appeal to the Tax Commissioner, collection activity with respect to the amount in dispute relating to any assessment by the Commissioner will be suspended until a final determination is issued by the Tax Commissioner, unless the Treasurer or other official responsible for the collection of such tax (i) determines that collection would be jeopardized by delay as defined in this section; (ii) is advised by the Commissioner or the Tax Commissioner that the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) is advised by the Commissioner that the appeal is frivolous as defined in this section. Interest will accrue in accordance with Code provisions, but no further penalty will be imposed while collection action is suspended. The requirement that collection activity be suspended will cease unless an appeal is filed and served on the necessary parties within 30 days of the service of notice of intent to file such appeal.

Implementation of determination of Tax Commissioner: Promptly upon receipt of the final determination of the Tax Commissioner with respect to an appeal, the Commissioner will take those steps necessary to calculate the amount of tax owed by or refund due to the taxpayer consistent with the Tax Commissioner's determination and will provide that information to the taxpayer and to the Treasurer or other official responsible for collection in accordance with the provisions of this subdivision.

(1) If the determination of the Tax Commissioner sets forth a specific amount of tax due, the Commissioner will certify the amount to the Treasurer, and the Treasurer will issue a bill to the taxpayer for such amount due, together with interest accrued and penalty, if any is authorized by the Code, within 30 days of the date of the determination of the Tax Commissioner.

(2) If the determination of the Tax Commissioner sets forth a specific amount of refund due, the Commissioner will certify the amount to the Treasurer, and the Treasurer will issue a payment to the taxpayer for such amount due, together with interest accrued pursuant to this section, within 30 days of the date of the determination of the Tax Commissioner.

(3) If the determination of the Tax Commissioner does not set forth a specific amount of tax due, or otherwise requires the Commissioner to undertake a new or revised assessment that will result in an obligation to pay a tax that has not previously been paid in full, the Commissioner will promptly commence the steps necessary to undertake such new or revised assessment, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The Commissioner will certify the new assessment to the Treasurer, and the Treasurer will issue a bill to the taxpayer for the amount due, together with interest accrued and penalty, if any is authorized by this section, within 30 days of the date of the new assessment.

(4) If the determination of the Tax Commissioner does not set forth a specific amount of refund due, or otherwise requires the Commissioner to undertake a new or revised assessment that will result in an obligation on the part of the locality to make a refund of taxes previously paid, the Commissioner will promptly commence the steps necessary to undertake such new or revised assessment or to determine the amount of refund due in the case of a correction to the license classification or subclassification of the business, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The Commissioner will certify the new assessment or refund amount to the Treasurer, and the Treasurer will issue a refund to the taxpayer for the amount of tax due, together with interest accrued, within 30 days of the date of the new assessment or determination of the amount of the refund.

JUDICIAL REVIEW OF DETERMINATION OF TAX COMMISSIONER TO CIRCUIT COURT

Application for judicial review: Following the issuance of a final determination of the Tax Commissioner pursuant to the Code, the taxpayer or Commissioner may apply to the appropriate circuit court for judicial review of the determination, or any part thereof, pursuant to § 58.1-3984. In any such proceeding for judicial review of a determination of the Tax Commissioner, the burden is on the party challenging the determination of the Tax Commissioner, or any part thereof, to show that the ruling of the Tax Commissioner is erroneous with respect to the part challenged. Neither the Tax Commissioner nor the Department of Taxation shall be made a party to an application to correct an assessment merely because the Tax Commissioner has ruled on it.

Suspension of payment of disputed amount of tax due upon taxpayer's notice of intent to initiate judicial review:

(1) On receipt of a notice of intent to file an application for judicial review, pursuant to the Code, a determination of the Tax Commissioner, and upon payment of the amount of the tax relating to any assessment by the Commissioner that is not in dispute together with any penalty and interest then due with respect to such undisputed portion of the tax, the Treasurer or other collection official will further suspend collection activity while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that (i) the taxpayer's application for judicial review is frivolous, as defined in the Code; (ii) collection would be jeopardized by delay, as defined in this section; or (iii) suspension of collection would cause substantial economic hardship to the locality. For purposes of determining whether substantial economic hardship to the locality would arise from a suspension of collection activity, the court will consider the cumulative effect of then-pending appeals filed within the locality by different taxpayers that allege common claims or theories of relief.

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

(3) No suspension of collection activity will be required if the application for judicial review fails to identify with particularity the amount in dispute or the application does not relate to any assessment by the Commissioner.

(4) The requirement that collection activity be suspended will cease unless an application for judicial review pursuant to the Code is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.

(5) The suspension of collection activity authorized by this subdivision will not be applicable to any appeal of a local license tax that is initiated by the direct filing of an action pursuant to the Code without prior exhaustion of the appeals provided by subdivisions herein.

Suspension of payment of disputed amount of refund due upon locality's notice of intent to initiate judicial review:

(1) Payment of any refund determined to be due pursuant to the determination of the Tax Commissioner of an appeal will be suspended if the locality assessing the tax serves upon the taxpayer, within 60 days of the date of the determination of the Tax Commissioner, a notice of intent to file an application for judicial review of the Tax Commissioner's determination pursuant to the Code pays the amount of the refund not in dispute, including tax and accrued interest. Payment of such refund will remain suspended while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that the locality's application for judicial review is frivolous, as defined in the Code.

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

(3) The suspension of the obligation to make a refund will cease unless an application for judicial review pursuant to the Code is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.

Accrual of interest on unpaid amount of tax. Interest will accrue in accordance with the provisions of the Code, but no further penalty will be imposed while collection action is suspended.

Rulings: Any taxpayer or authorized representative of a taxpayer may request a written ruling regarding the application of a local license tax to a specific situation from the Commissioner. Any person requesting such a ruling must provide all facts relevant to the situation placed at issue and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. In addition, the taxpayer or authorized representative may request a written ruling with regard to the classification applicable to the taxpayer's business, including whether the business properly falls within a business license subclassification established by the locality. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request will invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if (i) there is a change in the law, a court decision, or the guidelines issued by the Department of Taxation upon which the ruling was based or (ii) the Commissioner notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling which later becomes invalid will be deemed to have acted in good faith during the period in which such ruling was in effect.

Recordkeeping and audits: Every person who is assessable with a local license tax must keep sufficient records to enable the Commissioner to verify the correctness of the tax paid for the license years assessable and to enable the Commissioner to ascertain the correct amount of tax that was assessable for each of those years. All such records, books of accounts and other information must be open to inspection and examination by the Commissioner in order to allow the Commissioner to establish whether a particular receipt is directly attributable to the taxable privilege exercised within this jurisdiction. The Commissioner will provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there. In the event the records are maintained outside this jurisdiction, copies of the appropriate books and records must be sent to the Commissioner's office upon demand.

For additional information, see the Code of Virginia:

Section 58.1-3703.1 (Uniform ordinance provisions), generally beginning with paragraph A(5) entitled "Administrative appeals to commissioner of the revenue or other assessing official"