



COUNTY of FREDERICK


Jay E. Tibbs

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TO: Code and Ordinance Committee

FROM: Jay E. Tibbs, Deputy County Administrator for Human Services 

DATE: October 28, 2016

RE: **Code & Ordinance Committee Meeting Agenda**

There will be a meeting of the Code and Ordinance Committee on **Monday, November 7, 2016 beginning at 3:00 p.m., First Floor Conference Room, County Administration Building, 107 North Kent Street.** The following items will be discussed:

1. Proposed Amendment to the Frederick County Code, Chapter 155, Taxation, Article 1, General Provisions; Section 155-3, Tax Returns; failure to file. **(See Attached.)**
2. Proposed Amendment to the Frederick County Code, Chapter 155, Taxation, Article XVI, Business License Provisions, Section 155-81, Appeals and rulings. **(See Attached.)**
3. Such other business as may come before the Committee.

Should you have any questions or if you are unable to attend the meeting, please do not hesitate to contact me.

Attachments



COUNTY OF FREDERICK

Roderick B. Williams
County Attorney

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MEMORANDUM

TO: Code & Ordinance Committee

FROM: Roderick B. Williams
County Attorney

DATE: October 13, 2016

RE: Personal Property Tax – Penalty for Failure to File Return

At the Committee's last meeting, Supervisor Wells expressed interest in an ordinance amendment that would eliminate the penalty for failure to file certain County personal property tax returns. Presently, the County Code, pursuant to the requirement of Va. Code § 58.1-3518, provides for anyone who moves into the County (and brings a motor vehicle), or who acquires a new motor vehicle in the County, to report the same to the Commissioner of the Revenue, so that the Commissioner may assess the personal property tax against the vehicle. The County Code imposes a penalty, in the lesser of the amount of \$50 or 10% of the tax due, for failure to make that report to the Commissioner.

Many citizens, as well as motor vehicle dealers, may be unaware of this requirement, with the result being that such citizens are then subject to the penalty. The imposition of the penalty occurs even when the Commissioner ultimately obtains the vehicle information from the Department of Motor Vehicles, through periodic data downloads from DMV, pursuant to procedures authorized by the Commonwealth.

The attached draft ordinance revision would eliminate the penalty so far as it applies to motor vehicles, trailers, airplanes, boats, and mobile homes. The draft would maintain the penalty for business equipment, as the Commissioner would have no other means to obtain such information.

The draft also maintains the actual requirement for the filing of County personal property tax returns for motor vehicles, trailers, airplanes, boats, and mobile homes, even though it proposes the elimination of the penalty for the failure to make the filings. This is generally for

two reasons. First, Va. Code § 58.1-3518 still imposes the filing requirement, though it does not require the imposition of a penalty (a separate provision of state law, Va. Code § 58.1-3518.1, allows the County to provide that a taxpayer need not file a return for any subsequent year in which there is no change in the taxpayer's vehicle ownership/location and the County has enacted such a provision, County Code § 158-3(D)). Second, we are also aware of one collateral issue that may result if the County Code did not include the requirement. Bankruptcy law provides that a debtor in a bankruptcy case may not receive a bankruptcy discharge for any tax "with respect to which a return, or equivalent report or notice, if required ... was not filed or given." 11 U.S.C. § 523(A)(1)(B)(i). Bankruptcy law in fact generally gives most taxes a preferred status over other debts, this being reflective of a policy decision that seeks to protect government revenue flow. While the County may ultimately elect, with the enactment of the ordinance revision, not to impose a penalty, the County would likely not wish to forego the benefit of such bankruptcy law provision for potential collection of actual tax revenue itself in those instances when taxpayers file bankruptcies.

Finally, the draft contains various technical amendments, including to the machinery and tools and business equipment filing requirements, these amendments having been suggested by the Commissioner of the Revenue.

Attachment



ORDINANCE

_____, 2016

The Board of Supervisors of Frederick County, Virginia hereby ordains that Section 155-3 (Tax returns; failure to file) of Article I (General Provisions) of Chapter 155 (Taxation) of the Code of Frederick County, Virginia be, and the same hereby is, amended by enacting an amended Section 155-3 (Tax returns; failure to file) of Article I (General Provisions) of Chapter 155 (Taxation) of the Code of Frederick County, Virginia, as follows (deletions are shown in **bold strikethrough** and additions are shown in **bold underline**):

§ 155-3. Tax returns; failure to file.

A. The annual return of taxable tangible personal property **for any motor vehicle, trailer, airplane, boat,** and mobile homes **for in** the County shall be filed with the Commissioner of Revenue for the County on or before the 15th day of February of each year, except as stated in Subsections D and E; provided, further, that the annual return of taxable personal property for any motor vehicle, trailer, airplane, **or boat, and mobile home** acquired after January 1 shall be filed with the Commissioner of Revenue **on or before the 15th day of February of each year or** within 60 days from the date of acquisition or situs in the County, **whichever occurs later**. Each return shall be signed by the owner of the property. If the property is owned by an association, partnership, limited liability company, or corporation, the return shall be signed by a member, partner, executive officer, or other person specifically authorized in writing by the association, partnership, limited liability company, or corporation to sign.

B. The annual return of taxable machinery and tools, **furniture and fixtures and of taxable business tangible personal property** employed in a business or trade **for in** the County **as of January 1** shall be filed with the Commissioner of Revenue for the County on or before the **15th 1st** day of March of each year; provided, further, that the annual return of taxable machinery and tools, **furniture and fixtures and of taxable business tangible personal property** acquired after January 1 shall be filed with the Commissioner of Revenue on or before the **15th 1st** day of March of **each the following** year **or within 60 days from the date of acquisition or situs in the County, whichever occurs later**. Each return shall be signed by the owner of the property. If the property is owned by an association, partnership, limited liability company, or corporation, the return shall be signed by a member, partner, executive

officer, or other person specifically authorized in writing by the association, partnership, limited liability company, or corporation to sign.

C. A penalty for failure to file ~~such return as required by this section shall be assessed as follows:~~

~~(1) — As to a return required by subsection A, at the rate of 10% of the tax assessable or due on such property, provided that such penalty shall not be less than a minimum of \$2 and shall not be more than a maximum of \$50; and~~

~~(2) — As to a return required by subsection B, shall be assessed at the rate of 10% of the tax assessable or due on such property or \$2, whichever shall be the greater.~~

D. Notwithstanding the provisions of § 155-3A, Frederick County provides for an alternative method of filing personal property tax returns for motor vehicles, trailers and boats. Such motor vehicles, trailers and boats may be assessed annually based on a previous personal property tax return filed by the owner or owners of such property. For those whose name or address has not changed since a previous filing and whose personal property has had no change in status or situs, the assessment and taxation of property shall be based on a personal property tax return previously filed with Frederick County, which hereby adopts this alternative method of filing. Personal property tax returns for mobile homes must, however, be filed annually, even if no change occurs.

E. Such owner or owners of motor vehicles, trailers, ~~and boats,~~ and mobile homes must file a new personal property tax return whenever there is:

(1) A change in the name or address of the person or persons owning such taxable personal property;

(2) A change in the situs of personal property;

(3) Any other change affecting the assessment or levy of the personal property tax on motor vehicles, trailers, ~~and boats,~~ and mobile homes for which a tax return has been filed previously; or

(4) Any change in which a person acquires one or more motor vehicles, trailers, ~~and boats,~~ and mobile homes and for which no personal property tax return has been filed.

Enacted this _____ day of _____, 2016.

Charles S. DeHaven, Jr., Chairman _____

Gary A. Lofton _____

Robert A. Hess _____

Robert W. Wells _____

Blaine P. Dunn _____

Gene E. Fisher _____

Judith McCann-Slaughter _____

A COPY ATTEST

Brenda G. Garton
Frederick County Administrator



COUNTY OF FREDERICK

Roderick B. Williams
County Attorney

540/722-8383
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MEMORANDUM

TO: Code & Ordinance Committee

FROM: Roderick B. Williams
County Attorney

DATE: October 13, 2016

RE: BPOL Tax – Appeals and Rulings

As part of ongoing review of the County Code and in consultation with the Commissioner of the Revenue, we have determined that County Code § 155-81, regarding BPOL tax appeals and rulings, needs to be updated to correspond with the relevant provisions of the § 58.1-3703.1 of the Code of Virginia. Attached please find a draft ordinance revision and a copy of § 58.1-3703.1 of the Code of Virginia.

Attachments



ORDINANCE

_____, 2016

The Board of Supervisors of Frederick County, Virginia hereby ordains that Section 155-81 (Appeals and rulings) of Article XVI (Business License Provisions) of Chapter 155 (Taxation) of the Code of Frederick County, Virginia be, and the same hereby is, amended by enacting an amended Section 155-81 (Appeals and rulings) of Article XVI (Business License Provisions) of Chapter 155 (Taxation) of the Code of Frederick County, Virginia, as follows (deletions are shown in ~~strikethrough~~ and additions are shown in underline):

§ 155-81. Appeals and rulings.

~~A. Any person assessed with a licensing tax under this article as the result of an audit may apply within 90 days from the date of the assessment to the assessing official of Frederick County for a correction of the assessment. The application must be filed in good faith and sufficiently identify the taxpayer, audit period, remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies and any other facts relevant to the taxpayer's contention. The Assessor may hold a conference with the taxpayer if requested by the taxpayer or require submission of additional information and documents, further audit or other evidence deemed necessary for a proper and equitable determination of the applications. The assessment shall be deemed prima facie correct. The Assessor shall undertake a full review of the taxpayer's claims and issue a determination to the taxpayer setting forth its position. Every assessment pursuant to an audit shall be accompanied by a written explanation of the taxpayer's right to seek correction and the specific procedure to be followed in the jurisdiction (e.g., the name and address to which an application should be directed).~~

~~B. Provided that an application is made within 90 days of an assessment, collection activity shall be suspended until a final determination is issued by the Assessor, unless the Assessor determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of this article, but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" includes a finding that the application is frivolous, or that a taxpayer desires to depart quickly from the locality, to remove his property therefrom, to conceal himself or his property therein or to 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 license tax under this article as a result of an audit may apply within 90 days of the determination by the assessing official on an application pursuant under this article as detailed above to the Tax Commissioner of the Virginia Department of Taxation (hereinafter called the "Tax Commissioner") for a correction of such assessment. The Tax Commissioner shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's application, unless the taxpayer and the assessing official are notified that a longer period will be required. The application shall be treated as an application pursuant to § 58.1-1821, Code of Virginia, and the Tax Commissioner may issue an order correcting such assessment pursuant to § 58.1-1822, Code of Virginia. Following such an order, either the taxpayer or the assessing official may apply to the appropriate circuit court pursuant to § 58.1-3984, Code of Virginia. However, the burden shall be on the party making the application to show that the ruling of the Tax Commissioner is erroneous. Neither the Tax Commissioner nor the 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 under this article as detailed above, the assessing official shall further suspend collection activity until a final determination is issued by the Tax Commissioner, unless the Assessor determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of this article, 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 this article.~~

~~E. Any taxpayer may request a written ruling regarding the application of the tax to a specific situation from the Assessor. Any person requesting such a ruling must provide all the relevant facts for the situation and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if there is a change in the law or a court decision or if the Assessor notifies the taxpayer of a change in the policy or any 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.~~

A. Definitions. For purposes of this section:

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

"Appealable event" means an increase in the assessment of a local license tax payable by a taxpayer, the denial of a refund, or the assessment of a local

license tax where none previously was assessed, arising out of the 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 shall include 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.

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

"Jeopardized by delay" means a finding, based upon specific facts, that a taxpayer designs 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.

B. Filing and contents of administrative appeal.

1. Any person assessed with a local license tax as a result of an appealable event as defined in this section 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 of the revenue. 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. The commissioner of the revenue 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 of the revenue shall undertake a full review of the

taxpayer's claims and issue a written determination to the taxpayer setting forth the facts and arguments in support of his decision.

2. 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 shall 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 shall in no way affect or change any limitations period prescribed by law for appealing an assessment.
- C. Notice of right of appeal and procedures. Every assessment made by the commissioner of the revenue pursuant to an appealable event shall include or be accompanied by a written explanation of the taxpayer's right to file an administrative appeal and the specific procedures to be followed in the jurisdiction, the name and address to which the appeal should be directed, an explanation of the required content of the appeal, and the deadline for filing the appeal.
- D. Suspension of collection activity during appeal. Provided a timely and complete administrative appeal is filed, collection activity with respect to the amount in dispute relating to any assessment by the commissioner of the revenue shall be suspended until a final determination is issued by the commissioner of the revenue, unless the treasurer (i) determines that collection would be jeopardized by delay as defined in this section; (ii) is advised by the commissioner of the revenue that the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) is advised by the commissioner of the revenue that the appeal is frivolous as defined in this section. Interest shall accrue in accordance with the provisions of subdivision 2 e of subsection A of section 58.1-3703.1 of the Code of Virginia (1950, as amended), but no further penalty shall be imposed while collection action is suspended.
- E. Procedure in event of nondecision. Any taxpayer whose administrative appeal to the commissioner of the revenue 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 of the revenue, 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 subdivision 6 of subsection A of section 58.1-3703.1 of the Code of Virginia (1950, as amended). The Tax Commissioner shall not consider an appeal filed pursuant to the provisions of this subsection if he finds that the absence of a final determination on the part of the commissioner of the revenue was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the commissioner to

make his determination.

F. Rulings.

1. 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 of the revenue. 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.

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

Enacted this _____ day of _____, 2016.

Charles S. DeHaven, Jr., Chairman	_____	Gary A. Lofton	_____
Robert A. Hess	_____	Robert W. Wells	_____
Blaine P. Dunn	_____	Gene E. Fisher	_____
Judith McCann-Slaughter	_____		

A COPY ATTEST

Brenda G. Garton
 Frederick County Administrator