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Approved on a motion by: \_\_\_\_\_

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**Chapter 165, Article I:** The Clarke County Board of Supervisors shall consider amending Clarke County Code Chapter 165 Article I Business License Tax in its entirety. The proposed article provides various updates based on the Code of Virginia and places a new requirement that applicants for a business license must prove all delinquent business license fees, personal property, meals, and transient occupancy taxes have been paid.

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## **Chapter 165 Taxation**

### Article I – Business Licenses

#### *165-1. Intent.*

The purpose of this article is to require a license be obtained for all persons or entities engaged in business or professional services conducted in the unincorporated areas of the County, to impose a license fee thereon, provide for the collection thereof, and to impose penalties for failure to comply with the provisions hereof.

#### *165-2. Definitions*

For the purposes of this Article, unless otherwise required by the context, the following definitions shall apply:

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

<b>Definite Place of Business</b>	An office or a 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 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.
<b>Entity</b>	A business organization, other than a sole proprietorship, that is a corporation, limited liability company, limited partnership, or limited liability partnership duly organized under the laws of the Commonwealth or another state.
<b>Itinerant Merchant</b>	Any person who engages in, does, or transacts any temporary or transient business in any locality and who, for the purpose of carrying on such business, occupies any location for a period of less than one year.
<b>License Year</b>	The calendar year for which a license for the privilege of engaging in business is issued.
<b>Peddler</b>	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. The definition of peddler shall not include a peddler at wholesale or to those who sell or offer for sale in person or by their employees ice, wood, charcoal, meats, milk, butter, eggs, poultry, 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.
<b>Professional Services</b>	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 occupations, and no others, as the Department of Taxation may list in the BPOL guidelines promulgated pursuant to Code of Virginia (1950) § 58.1-3701, as amended. The Department shall identify and list each 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 in its practical application to the affairs of others, either advising,

guiding, or teaching them, and in serving their interests or welfare in the practice of an art or science founded on it. The word "profession" implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.

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

*165-3. License requirements.*

- A. Every person or entity engaging in a business or profession within the county shall apply annually for a license therefor, if
  - 1. the person or entity has a definite place of business in the county;
  - 2. there is no definite place of business anywhere and the person resides in the county; or
  - 3. there is no definite place of business in the county but the person or entity operates amusement machines or is classified as an itinerant merchant, peddler, carnival, circus, contractor subject to Code of Virginia (1950) §58.1-3715, as amended, or public service corporation.
- B. A separate license shall be required for each definite place of business and for each business.

*165-4. Due dates and penalties.*

- A. Each person or entity subject to a license shall apply for said license prior to beginning business or no later than March 1 of the license year, if a license had been issued for the preceding year. The application shall be on forms provided by the Commissioner of the Revenue.
- B. Under the authority of Code of Virginia (1950) §15.2-1429, as amended, the county hereby imposes the penalty of a class 3 misdemeanor and a fine of not more than \$500.00 for operating a business without a business license within the county.
- C. A penalty of ten percent of the fee may be imposed upon the failure to file an application or the failure to pay the fee by the appropriate date.
- D. If the failure to file or pay was not the fault of the license holder, the penalty shall not be imposed, or if imposed, shall be abated by the Commissioner of the Revenue. In order to demonstrate lack of fault, the license holder must show that he acted responsibly and that the failure was due to events beyond his control.

"Acted responsibly" means that: (i) the license holder 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 license holder undertook significant steps to avoid or mitigate the failure, such as attempting to prevent a foreseeable impediment, acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment was removed or the failure discovered.

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

- E. Any person assessed with a local license tax as a result of an audit may apply within 90 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 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, 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 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.)
- F. Any person assessed with a local license tax as a result of an audit may apply within 90 days of the determination by the assessing official or an application to 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 taxpayer's application. The application shall be treated as an application pursuant to Code of Virginia (1950) §58.1-1821, as amended, and the tax commissioner may issue an order correcting such assessment pursuant to Code of Virginia §58.1-1822, as amended. Following such an order, either the taxpayer or the assessing official may apply to the appropriate circuit court pursuant to Code of Virginia, § 58.1-3984.

#### *165-5. Rate of License Fee*

- A. The fee for the issuance of a business license shall be \$30.00 each year.

- B. No business license under this article shall be issued until the applicant has produced satisfactory evidence that all delinquent business license fees, personal property, meals, and transient occupancy taxes owed by the business to the county have been paid.

*165-6. Exemptions.*

No license fee shall be imposed:

- A. On any public service corporation, or any motor carrier, common carrier, or other carrier of passengers or property formerly certified by the Interstate Commerce Commission or presently registered for insurance purposes with the Surface Transportation Board of the United States Department of Transportation, Federal Highway Administration, except as provided in Code of Virginia (1950) § 58.1-1-3731, as amended, or as permitted by other provisions of law;
- B. For selling 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 the regular market houses and sheds of the county, provided such products are grown or produced by the person offering such products for sale;
- C. Upon the privilege or right of printing or publishing any newspaper, magazine, newsletter or other publication issued daily or regularly at average intervals not exceeding three months; provided the publication's subscription sales are exempt from state sales tax, or for the privilege or right of operating or conducting any radio or television broadcasting station or service;
- D. On a manufacturer for the privilege of manufacturing and selling goods, wares and merchandise at wholesale at the place of manufacturer. For purposes of this subdivision, this shall include a manufacturer that is also a defense production business selling manufacturing, rebuilding, repair, and maintenance services at the place of manufacture (i) to the United States or (ii) for which consent of the United States is required;
- E. On a person engaged in the business of severing minerals from the earth for the privilege of selling the severed mineral at wholesale at the place of severance, except as provided in Code of Virginia (1950) §58.1-3712 and §58.1-3713, as amended;
- F. Upon 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 the county This subdivision shall not be construed as prohibiting the county from imposing a local license fee on a peddler at wholesale pursuant to Code of Virginia (1950) §58.1-3718, as amended;
- G. Upon any 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, auto courts, tourist courts, travel trailer parks, campgrounds, bed and breakfast establishments, lodging houses, rooming houses and boarding houses;

- H. On or measured by receipts for management, accounting or administrative services provided on a group basis under nonprofit cost-sharing agreement by a corporation which is an agricultural cooperative association under the provisions of Code of Virginia (1950), Title 13.1, Chapter 3, Article 2 (§ 13.1-312 et seq.), as amended, or a member or subsidiary or affiliated association thereof, to other members of the same group. This exemption shall not exempt any such corporation from such license fee or other tax to be measured by receipts from outside the group;
- I. On or measured by receipts or purchases by an entity which is a member of an affiliated group of entities from other members of the same affiliated group. This exclusion shall not exempt affiliated entities from such license or other tax measured by receipts or purchases from outside the affiliated group. This exclusion shall not preclude the county from levying a wholesale merchant's license on an affiliated entity on those sales by the affiliated entity to a nonaffiliated entity, notwithstanding the fact that the wholesale merchant's license tax would be based upon purchases from an affiliated entity. Such tax shall be based on the purchase price of the goods sold to the nonaffiliated entity. As used in this subdivision, the term "sales by the affiliated entity to a nonaffiliated entity" means sales by the affiliated entity to a nonaffiliated entity where goods sold by the affiliated entity or its agent are manufactured or stored in the Commonwealth prior to their delivery to the nonaffiliated entity;
- J. Any insurance company subject to taxation under Code of Virginia (1950), Title 58.1, Chapter 25 (§ 58.1-2500 et seq.), as amended, or on any agent of such company;
- K. Any bank or trust company subject to taxation in Code of Virginia (1950), Title 58.1, Chapter 12 (§ 68.1-1200 et seq.), as amended;
- L. Any taxicab driver, if the county has imposed a license fee upon the taxicab company for which the taxicab driver operates;
- M. Any blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired, or a nominee of the Department, as set forth in Code of Virginia (1950), §51.5-98, as amended;
- N. On an accredited religious practitioner in the practice of the religious tenets of any church or religious denomination. "Accredited religious practitioner" shall be defined as one who is engaged solely in praying for others upon accreditation by such church or religious denomination;
- O. On or measured by receipts of a nonprofit organization described in Internal Revenue Code §501(c)(3) or 501(c)(19), except to the extent the organization has receipts from an unrelated trade or business the income of which is taxable under Internal Revenue Code §511 et seq. For the purposes of this subdivision, "nonprofit organization" means an organization that is described in Internal Revenue Code §501(c)(3) or 501(c)(19), and to which contributions are deductible by the contributor under Internal Revenue Code §170, except that educational institutions exempt from federal income tax under

Internal Revenue Code §501(c)(3) shall be limited to schools, colleges, and similar institutions of learning;

- P. On or measured by gifts, contributions, and membership dues of a nonprofit organization. For the purpose of this subdivision, "nonprofit organization" means an organization exempt from federal income tax under the Internal Revenue Code §501 other than the nonprofit organizations described in the previous subdivision;
- Q. On any venture capital fund or other investment fund, except commissions and fees of such funds. Gross receipts from the sale and rental of real estate and buildings remain taxable by the locality in which the real estate is located, provided the locality is otherwise authorized to tax such business and rental of real estate;
- R. On total assessments paid by condominium unit owners for common expenses. "Common expenses" and "unit owner" have the same meanings as in Code of Virginia (1950) §55.1-1900, as amended;
- S. On or measured by receipts of a qualifying transportation facility, directly or indirectly owned or title to which is held by the Commonwealth or any political subdivision thereof, or by the United States as described in Code of Virginia (1950) §58.1-3606.1, as amended, and developed and/or operated pursuant to a concession under the Public-Private Transportation Act of 1995 (Code of Virginia (1950) §33.2-1800 et seq.), as amended, or similar federal law.

*§165-7 to §165-14 Reserved for future use.*