

ORDINANCE NO. 22-8() & 22-15()

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 8, LICENSES, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 8, Licenses, and Chapter 15, Taxation of the Code of the County of Albemarle, Virginia, is hereby amended as follows:

By Amending:

8-201 When license application and license tax are due; penalties.

15-106 Erroneous assessments

Chapter 8. Licenses

Article 1. Business Licenses

Division 2. License Requirement, Situs of Gross Receipts, Appeals, and Recordkeeping

Sec. 8-201 When license application and license tax are due; penalties.

Each person subject to a license tax shall apply for a license and pay the license tax as follows:

A. *When license application is due.* 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 County on or before January 1 of the license year, or no later than March 1 of the license year if he had been issued a license for the preceding year. The application shall be on forms prescribed by the Director of Finance.

B. *When license tax is due.* The tax shall be paid with the license application in the case of any license tax 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 June 15 of the license year; provided that each motor vehicle dealer who separately states the amount of the license tax applicable to each sale of a motor vehicle and adds the tax to the sales price of the motor vehicle shall pay the tax on or before the twentieth day of the month following the close of each calendar quarter.

C. *Extensions.* The Director of Finance may grant an extension of time in which to file an application for a license, for reasonable cause. The extension may be conditioned upon 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. *Penalty for failure to timely file an application or pay the license tax.* The Director of Finance will impose a penalty for failure to timely file an application or pay the license tax as follows:

1. *When late penalty imposed.* A penalty of ten percent of the tax may be imposed by the Director of Finance upon the failure of any person to file an application or the failure to pay the tax by the appropriate due date. The Director of Finance shall impose only the late filing penalty if both the application and license tax payment are late; provided that the Director may impose both penalties if the Director determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the Director of Finance, 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, the Director shall not impose a late payment penalty with the additional tax. If any assessment of tax by the Director of Finance is not paid within 30 days, the Director may impose a ten percent late payment penalty.

2. *When late penalty not imposed.* If the failure to file or pay was not the fault of the taxpayer, the Director of Finance shall not impose a late penalty, or if imposed, shall be abated by the official who assessed them. In order to demonstrate lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control.

a. *Acted responsibly defined.* "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 discovered.

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

E. *Interest on late payments.* The Director of Finance shall charge interest on the late payment of the tax from the due date until the date paid without regard to fault or other reason for the late payment. ~~Whenever an assessment of additional or omitted tax by the Director is found to be erroneous, all interest and any penalties 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 collected pursuant to this article from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason. Interest on any refund shall be paid at the same rate charged under Virginia Code § 58.1-3916.~~

~~1. *When interest does not accrue.* No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year.~~

~~2. *When interest not refunded or charged.* No interest shall be refunded or charged on a late payment, provided the refund or the late payment is made not more than 30 days from the date of the payment that created the refund or the due date of the tax, whichever is later.~~

(§ 8-201; Ord. 19-8(1), 4-17-19, Ord.22-8(), 11-2-22, effective 1-1-23)

State law reference(s)—Va. Code § 58.1-3703.1.

Chapter 15. Taxation

Article 1 Administration

Sec. 15-106 Erroneous assessments

- A. This section applies to the erroneous assessment of any fee or tax under this chapter, as well as Chapter 8.
- B. The Director of Finance shall investigate, exonerate, and refund erroneously assessed fees and taxes in accordance with Virginia Code § 58.1-3981.
- C. Minor amounts. The Director is authorized to approve and issue any refund of erroneously assessed or paid taxes, up to the maximum amount allowed under Virginia Code § 58.1-3981(A), without consulting the Board of Supervisors or the County Attorney.
- D. Quarterly reports. The Director shall make quarterly reports to the Board of Supervisors that itemize these refunds.

(11-3-76; 4-13-88; Ord. of 2-14-90; Ord. of 2-5-92; Ord. No. 94-8(4), 11-2-94; Code 1988, § 8-1.1; § 15-102, Ord. 98-A(1), 8-5-98; § 15-106, Ord. 19-15(1), 4-17-19, Ord. 22-15(), 11-2-22, effective 1-1-23)

State Law reference— Va. Code § 58.1-3990.

~~If the Director of Finance may have made an erroneous assessment:~~

- ~~A. *Investigation, exoneration, and refunds.* The Director, after diligent investigation and upon being satisfied that he has erroneously assessed a taxpayer with any local taxes shall, if the taxes have not been paid, exonerate the taxpayer from payment of the part of the amount that is erroneous, and if the taxes have been paid, shall refund to the taxpayer the amount erroneously paid together with any penalties and interest paid thereon.~~
- ~~B. *Quarterly reports.* The Director shall make quarterly reports to the Board of Supervisors that itemize these refunds.~~
- ~~C. *Applicability of Virginia Code § 58.1-3990.* Except as otherwise provided in this section, Virginia Code § 58.1-3990 applies to this section.~~

~~(11-3-76; 4-13-88; Ord. of 2-14-90; Ord. of 2-5-92; Ord. No. 94-8(4), 11-2-94; Code 1988, § 8-1.1; § 15-102, Ord. 98-A(1), 8-5-98; § 15-106, Ord. 19-15(1), 4-17-19)~~

~~State law reference(s)—Va. Code § 58.1-3990.~~

This ordinance is effective immediately.

I, Claudette K. Borgersen, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of _____ to _____, as recorded below, at a regular meeting held on _____.

Clerk, Board of County Supervisors

	<u>Aye</u>	<u>Nay</u>
Mr. Andrews	_____	_____
Mr. Gallaway	_____	_____
Ms. LaPisto-Kirtley	_____	_____
Ms. Mallek	_____	_____
Ms. McKeel	_____	_____
Ms. Price	_____	_____