



Albemarle County

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AGENDA DATE: 1/4/2017

TITLE:

Tax Collection Policies and Procedures

SUBJECT/PROPOSAL/REQUEST: Review of the Finance Department's Tax Assessment and Collection Policies and Procedures

ITEM TYPE: Regular Information Item

STAFF CONTACT(S): Foley, Letteri, Kamptner, Herrick, Burrell, Lamb

PRESENTER (S): Betty Burrell

LEGAL REVIEW: Yes

REVIEWED BY: Thomas C. Foley

BACKGROUND: During the past couple of years and in accordance with prior board direction, the Finance Department has increased its efforts to improve the overall percentage of tax collection. A number of initiatives, previously discussed with the board, include stepped up audit procedures, verification and cross checking with IRS records, and the engagement of outside collection agencies. These efforts have increased the county's overall success in collecting all taxes due. While consistent with Virginia and County codes, more aggressive collection practices have also caused some taxpayers to question the fairness and flexibility of the county's collection policies resulting in citizen inquiries and complaints to board members. The purpose of this executive summary is to outline recent efforts to improve tax collections, especially as related to unpaid business license taxes and fees; to provide information related to the county's limited discretion to deviate from the State's uniform business license ordinance; and to discuss existing and possible future improvements in procedures and communications to help inform the public and mitigate citizen complaints. The following is a brief history of recent enhanced collection efforts:

Business Personal Property Tax Reporting

Prior to January 2014 The Finance Department's Business Tax Division previously allowed businesses to omit items with an original cost of \$250 from their business personal property (BPP) tax returns. Once the Finance

Director determined in 2013 that there was no enabling authority for this practice in either the Virginia or County Codes, it was discontinued.

January 2014 Businesses were notified that all BPP items, regardless of original cost, were to be reported on their 2014 annual returns. Though this practice complied with State law, the change in practice generated some concern among the business community and the Board of Supervisors. Subsequently, with the County's support, the 2015 General Assembly adopted legislation that enabled localities to allow a taxpayer to provide, in lieu of a specific itemized list, an aggregate estimate of the total cost of certain tangible personal property used in a trade or business that has an original cost of less than \$250.

Business License Audit

Prior to July 2016 The Business Tax Audit of the Revenue Administration Unit developed and instituted an Audit Plan in 2015. The Unit shifted from performing reactive business tax audits and reviews to a more proactive approach. Specifically, staff began initiating contact with apparently non-compliant businesses.

July 2016 The Finance Department alerted County taxpayers who had filed Schedule C income tax returns (indicating business income) that the County Code requires a business license for all businesses, including Rental By Owner (RBO) businesses. Because the County Code has required licenses from RBO businesses since 1973, this requirement is "grandfathered" in the County. Business owners were given until October 31, 2016 to file returns and until December 5, 2016 to pay any unpaid business license taxes or fees. Also at this time, at staff's recommendation, the Board adopted three ordinances that included several changes to the County's license and tax ordinances.

September 2016 Finance sent additional letters to those County businesses that had filed electronic Schedule C income tax returns, but had not yet obtained corresponding business licenses. These subsequent letters requested additional information from the Schedule C filers in order to determine if these businesses were subject to County business licensure.

STRATEGIC PLAN: Economic Prosperity: Foster an environment that stimulates diversified job creation, capital investments, and tax revenues that support community goals.

DISCUSSION:

Finance Department Enhanced Enforcement of Existing County Code. Though more diligent enforcement of existing business license requirements may represent a change in practice, it does not represent a change in the underlying law. For many years, County Code § 8-101(A) has required, "Each person engaging in a business in this county whose gross receipts are greater than five thousand dollars (\$5,000) shall apply for and obtain a license for each such business" if the business has legal situs in the County. For purposes of this requirement, a "business" has been defined in County Code § 8-103(4) as "...a course of dealing in any business, trade, profession, occupation or calling which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit." Exemptions from this broad requirement are relatively few. (See Virginia Code § 58.1-3703 (B), (C) and (D), which enables localities to exempt certain businesses, including those engaged in software development, and qualifying businesses under an incentive program, and which prohibits localities from imposing a license fee or tax on approximately 20 business classifications.) Again, though perhaps a change from prior practice in the County, the County's recent enforcement and collection practices are more consistent with the standard practices of other localities statewide.

County's Limited Discretion. In both the ordinance language and in the enforcement of its provisions, County discretion is limited by the Virginia Uniform Ordinance which limits the Board's discretion to amend the County's Ordinance. Virginia Code § 58.1-3702 and § 58.1-3703 enable localities to require business licenses and to impose license taxes or fees. However, Virginia Code § 58.1-3703.1 requires that every local business license ordinance include provisions "substantially similar" to the Virginia Code's uniform ordinance, and substantial deviations are not allowed. Though the County's business license ordinance (first adopted in 1973) pre-dates the Virginia Code's uniform ordinance (1996), the County ordinance does include provisions substantially similar to the Virginia Code's uniform ordinance.

As an example of the County's limited discretion, Virginia Code § 58.1-3703.1(A)(2)(d) provides: "A penalty of

10 percent of the tax may be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due date.” Under this provision, the County has clear authority to have a 10 percent penalty or none at all.

County Ordinance Limits Finance Director’s Enforcement Discretion. The assessment of back taxes and penalties is not at the Finance Director’s discretion, but is regulated by the County’s current ordinance:

a. County Code § 8-500 states in part, “If the director of finance determines that a person has not been assessed with a license tax... for any license year of the three (3) license years last past...then the director of finance shall assess such person with the proper license tax for the year or years omitted, adding thereto the penalty and interest set forth in § 8-406 and § 8-407.” *Virginia Code* § 58.1-3903 likewise requires the addition of penalty and interest when a local assessing official ascertains that any local tax has not been assessed or has been under-assessed for any of the three preceding tax years. The only exception is “if such assessment was necessitated through no fault of the taxpayer,” which Attorney Generals’ opinions have narrowly construed.

b. County Code §§ 8-406 and 8-502 prescribe the number of assessable years for omitted business license taxes and when late payment penalties apply:

•County Code § 8-502 states in part, “The omitted or additional license tax and the penalty and interest provided by this chapter shall be assessed for each and every year of the six (6) license years last past and for the current license year, for which he was assessable.” This provision is substantially similar to the uniform ordinance provision in *Virginia Code* § 58.1-3703.1(A)(4)(b): “Notwithstanding § 58.1-3903, the assessing official shall assess the local license tax omitted because of fraud or failure to apply for a license for the current license year and the six preceding license years.”

•County Code § 8-406 states: “A penalty of ten percent (10%) of the tax shall be imposed upon the failure to file an application or the failure to pay the license tax or the license fee by the appropriate due date.” As noted above, *Virginia Code* § 58.1-3703.1(A)(2)(d) enables (but does not require) a penalty of 10 percent on a failure to file an application or a failure to pay a license tax by the appropriate due date.

Notices and Communications. During the course of implementing the various enhanced collection procedures, staff acknowledged the need to provide advance notice and improved communications to citizens and businesses regarding any changes in the tax code or collection methodologies. The Executive Office, the Communications Office and Finance initiated a communications review procedure where all public notices and communications regarding tax code changes or collection procedures are reviewed prior to release. Additionally, and pursuant Board direction, Finance has prepared an annual December notice alerting citizens and businesses to tax code changes effective in the coming year. Notwithstanding these improved efforts, staff recognizes the need for greater clarity, frequency and timeliness of information and has outlined a number of strategies, including expanding advertisement of BPOL due dates, to include explanation of tax and who’s responsible; special communications to alert citizens regarding stepped up audit/compliance efforts; development of information brochures explaining various licensure/tax obligations associated with different activities; extending circulation of brochures to banks, DMV, real estate offices, legal offices, etc.; enhance online and social media efforts to inform citizens of various tax types and due dates; outreach to various groups (Real Estate Associations, Chamber of Commerce, BAR, etc.); and consideration of an insert of information brochure in Real Estate Tax bills. Staff will outline some of these suggested strategies in more detail during the presentation.

BUDGET IMPACT: The Finance Department’s Schedule C initiative has resulted in \$496,228.02 in increased revenue (\$451,116.38 in taxes; and \$45,111.64 in late payment penalties) from July 1 through December 6, 2016. This additional revenue to date represents 4.2 percent of the total business license revenue collected in all of FY 2016 (\$11,952,435).

RECOMMENDATION:

Finance will present a communication action plan to the Board and the public during the meeting. Both this

Executive Summary and Finance's proposed communication action plan are for the Board's information. Staff would be happy to provide additional information at the Board's direction.