

STEPHENS CITY CODE

**LICENSE AND OCCUPATION TAXES**

**Art. I In General, §§9-1 – 9-14**

**Art. II License Tax Rates §§9-15**

**Art. III Pawn Brokers §§ 9-63**

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**\*Cross references:** Town Treasurer to receive deposit, and pay out from licenses and taxation, §2-111; animals, Ch.3; buildings, Ch.4; historic district Ch. 8, vehicle license, §10-71 et seq.; music and entertainment festivals, ch.11; streets, sidewalks and public places, ch.17; permission for certain encroachments on street, sidewalk, etc.,§17-5; subdivisions, ch.18; taxation, ch.19; taxicabs, ch20; taxicab license required. §20-16; trailers and trailer camps, ch.21; franchises, app A.

**State law references-**Professions and occupations, Code of Virginia, Title 54.1; local license taxes, Code of Virginia,§58.1-3700 et seq.; enforcement, collection, refunds, remedies and review of local taxes, Code of Virginia, §58.1-3900 et seq.

# LICENSE AND OCCUPATION TAXES

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## ARTICLE 1. IN GENERAL

### Sec. 9-1. Overriding Conflicting Ordinances.

Except as may be otherwise provided by the laws of the Commonwealth of Virginia, and notwithstanding any other current ordinances or resolutions enacted by this governing body, whether or not compiled in the Code of this jurisdiction, to the extent of any conflict, the following provisions shall be applicable to the levy, assessment, and collection of licenses required and taxes imposed on businesses, trades, professions and callings and upon the persons, firms and corporations engaged therein within this locality.

### Sec 9-2. Definitions.

For the purposes of this ordinance, unless otherwise required by the context:

*Affiliated Group* means

- a. One or more chains of includable corporations connected through stock ownership with a common parent corporation which is an includable corporation is:
  - i. Stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of each of the includable corporations, except the common parent corporation, is owned directly by one or more of the other includable corporations; and
  - ii. The common parent corporation directly owns stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at least one of the other includable corporations. As used in this subdivision, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends. The term "includable corporation" means any corporation within the affiliated group irrespective of the state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.
- b. Two or more corporations if five or fewer persons who are individuals, estates or trust own stock possessing:
  - i. At least eighty percent of the total combined voting power of all classes of stock entitled to more than fifty percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

When one or more of the includable corporations, including the common parent corporation is a nonstock corporation, the term "stock" as used in this subdivision shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

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*Assessment* means a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be deemed made by an assessing official when a written notice of assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return of the payment of tax, as the case may be.

*Assessor or Assessing Official* means the Town Treasurer for the Town of Stephens City, Virginia, and in the Treasurer's absence she may delegate her authority to the Town Clerk.

*Base Year* means the calendar year preceding the license year, except for contracts subject to the provisions of §58.1-3715.

*Business* means a course of dealing which requires the time, attention and labor of the person so engaged 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.

*Contractor* shall have the meaning prescribed in §58.1-3714.D of the Code of Virginia, as amended, whether such work is done or offered to be done by day labor, general contract or subcontract.

*Definite Place of Business* means 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 licensable as a peddler or itinerant merchant.

*Financial Services* means the buying, selling, handling, managing, investing, and providing of advice regarding money, credit, securities and other investments and shall include the service for compensation by a credit agency, an investment company, a broker or dealer in securities and commodities or a security or commodity exchange, unless such service is otherwise provided for in this ordinance. As to financial services:

- a. *Broker* shall mean an agent of a buyer or a seller who buys or sells stock, bonds, commodities or services, usually on a commission basis;

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- b. *Commodity* shall mean staples such as wool, cotton, etc. which are traded on a commodity exchange and on which there is trading in futures;
- c. *Dealer* for purposes of this section shall mean any person engaged in the business of buying and selling securities for his own account, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business;
- d. *Security* for the purpose of this section shall have the same meaning as in the Securities Act (§13.1-501 et seq) of the Code of Virginia, or in similar laws of the United States regulating the sale of securities.

Those engaged in rendering financial services include, but without limitation, the following:

- Buying installment receivables
- Chattel mortgage financing
- Consumer financing
- Credit card services
- Factors
- Financing accounts receivable
- Industrial loan companies
- Installment financing
- Inventory financing
- Loan or mortgage brokers
- Loan or mortgage companies
- Safety deposit box companies
- Security and commodity brokers and services
- Stockbroker
- Working capital financing

*Gross Receipts* means the whole, entire, total receipts attributable to the licensed privilege, without deductions, except as may be limited by the provisions of Chapter 37 of Title 58.1 of the Code of Virginia

*License Year* means the calendar year for which a license is issued for the privilege of engaging in business.

*Personal Services* shall mean rendering for compensation any repair, personal, business or other services not specifically classified as "financial, real estate or professional service: under this ordinance, or rendered in any other business or occupation not specifically classified in this ordinance unless exempted from local license tax by Title 58.1 of the Code of Virginia.

*Professional Services* means 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 Virginia Department of Taxation may list

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in the BPOL guidelines promulgated pursuant to §58.1-3701 of the Code of Virginia. The Department shall identify and list each occupation or vocation in which a professed knowledge of some department of science of learning, gained by a prolonged course of specialized instruction and study is used by its practical application to the affairs of others, either advising, guiding or teaching them 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.

*Purchases* shall mean all goods, wares and merchandise received for sale at each definite place of business of a wholesale merchant. The term shall also include the cost of manufacture of all goods, wares and merchandise manufactured by any wholesaler or wholesale merchant and sold or offered for sale. Such merchant may elect to report the gross receipts from the sale of manufactured goods, ware and merchandise if it cannot determine or chooses not to disclose the cost of manufacture.

*Real Estate Services* shall mean rendering a service for compensation as lessor, buyer, seller agent or broker and providing a real estate service, unless the service is otherwise specifically provided for in this ordinance, and such services include, but not limited to, the following:

- Appraisal of real estate
- Escrow agents, real estate
- Fiduciaries, real estate
- Lessors of real property
- Real estate agents, brokers and managers
- Rental agent for real estate

*Retailer or Retail Merchant* shall mean any person or merchant who sells goods, wares and merchandise for use or consumption by the purchase, but does not include sales at wholesale to institutional, commercial and industrial users.

*Services* shall mean things purchased by a customer which do not have physical characteristics, or which are not goods, wares or merchandise/

*Wholesaler or Wholesale Merchant* shall mean any person or merchant who sells wares and merchandise for resale by the purchaser, including sales when the goods, wares and merchandise will be incorporated into goods and services for sale, and also includes sales to institutional, commercial, government and industrial users which because of the quantity, price or other terms indicate that they are consistent with sales at wholesale.

### **Sec. 9-3. License Requirement.**

- (a) Every person engaging in this jurisdiction in any business, trade, profession, occupation or calling (collectively hereinafter "a business") as defined in this ordinance, unless otherwise exempted by law, shall apply for a license for each such

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business if (i) such person maintains a definite place of business in this jurisdiction, (ii) such person does not maintain a definite office anywhere but does maintain an abode in this jurisdiction, which abode for the purposes of this ordinance shall be deemed a definite place of business, or (iii) there is no definite place of business but such person operates amusement machines, is engaged as a peddler or itinerant merchant, carnival or circus as specified in §§58.1-3717, -3718 or -3728, respectively of the Code of Virginia, or is a contractor subject to §58.1-3715 of the Code of Virginia, or is a public service corporation subject to §58.1-3731 of the Code of Virginia. A separate license shall be required for each definite place of business. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied: (i) each business or profession is licensable at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of this jurisdiction; (ii) all of the businesses or professions are subject to the same tax rate, or if subject to different tax rates, the licensee agrees to be taxed on all different rates, the licensee agrees to be taxed on all business and professions at the highest rate; and (iii) the taxpayer agrees to supply such information as the assessor may require concerning the nature of the several businesses and their gross receipts.

- (b) Each person subject to a license tax shall apply for a license prior to beginning business, if he

was not subject to licensing in this jurisdiction on or before January 1 of the license year, or no later than March 1 of the current license year if he had been issued a license for the preceding license year. The application shall be on forms prescribed by the assessing official.

(c) The tax shall be paid with the application in the case of any license not based on gross receipts. If the tax is measured by the gross receipts of this business, the tax shall also be tendered at the time the applicant submits the license application.

(d) The assessing official may grant an extension of time, not to exceed 90 days, in which to file an application for a license, for reasonable cause. The extension shall be conditioned upon the timely payment of a reasonable estimate of the appropriate tax, 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, a penalty of ten percent (10%) of the portion paid after the due date shall be assessed.

(e) A penalty of ten percent (10%) 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. Only the late filing penalty shall be imposed by the assessing official if both the application and payment are late; however, both penalties may be assessed if the assessing official determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the assessing official, 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,

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there shall be no late payment penalty assessed with the additional tax. If any assessment of tax by the assessing official is not paid within thirty (30) days, the treasurer shall impose a ten percent (10%) late payment penalty. The penalties shall not be imposed, or if imposed, shall be abated by the official who assessed the penalty, if the failure to file or pay was not the fault of the taxpayer. 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.

“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.

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

(f) Interest shall be charged 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 assessing official is found to be erroneous, all interest and penalty 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 of the due date, whichever is later. Interest shall be paid on the refund of any tax paid under this ordinance 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 §58.1-3916. No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year. No interest shall be paid on a refund or charged on a late payment, in event of such adjustment, provided the refund or the later payment is made not more than thirty (30) days from (i) the date of the payment that created the refund, or (ii) the due date of the tax, whichever is later.

### **Sec. 9-4. Situs of Gross Receipts.**

(a) General rule. Whenever the tax imposed by this ordinance is measured by gross receipts, the gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise of a licensable privilege at a definite place of business within this jurisdiction. In the case of activities conducted outside of a definite place of business, such as during a visit to a customer location, the gross receipts shall be attributed to the definite place of business from which such activities are initiated, directed, or controlled. The situs of gross receipts for different classifications of business shall be attributed to one or more definite places of business or offices as follows:

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1. The gross receipts of a contractor shall be attributed to the definite place of business at which his services are performed, or if his services are not performed at any definite place of business, then the definite place of business from which his services are directed or controlled, unless the contractor is subject to the provisions of §58.1-3715 of the Code of Virginia.
2. The gross receipts of a retailer or wholesaler shall be attributed to the definite place of business at which sales solicitation activities occur, or if sales solicitation activities do not occur at any definite place of business, then the definite place of business from which sales solicitation activities are directed or controlled; however, a wholesaler or distribution house subject to a license tax measured by purchases shall determine the situs of its purchases by the definite place of business at which or from which deliveries of the purchased goods, wares and merchandise are made to customers. Any wholesaler who is subject to license tax in two or more localities and who is subject to multiple taxation because the localities use different measures, may apply to the Department of Taxation for a determination as to the proper measures of purchases and gross receipts subject to license tax in each locality.
3. The gross receipts of a business renting tangible personal property shall be attributed to the definite place of business from which the tangible personal property is rented or, if the property is not rented, from any definite place of business, then the definite place of business at which the rental of such property is managed.
4. The gross receipts from the performance of services shall be attributed to the definite place of business at which the services are performed or, if not performed at any definite place of business, then the definite place of business from which the services are directed or controlled.

(b) Apportionment. If the licensee has more than one definite place of business and it is impractical or impossible to determine to which definite place of business gross receipts should be attributed under the general rule (and the Town is unable to reach an apportionment agreement with the other affected jurisdiction) except as to circumstances set forth in §58.1-3709 of the Code of Virginia, the gross receipts of the business shall be apportioned between the definite places of business on the basis of payroll. Gross receipts shall not be apportioned to a definite place of business unless some activities under the applicable general rule occurred at, or were controlled from, such definite place of business. Gross receipts attributable to a definite place of business in another jurisdiction shall not be attributed to this jurisdiction solely because the other jurisdiction does not impose a tax on the gross receipts attributable to the definite place of business in such jurisdiction.

(c) Agreements. The assessor may enter into agreements with any other political subdivision of Virginia concerning the manner in which gross receipts shall be apportioned among definite places of business. However, the sum of the gross receipts apportioned by the agreement shall not exceed the total gross receipts attributable to all of the definite places of

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business affected by the agreement. Upon being notified by a taxpayer that its method of attributing gross receipts is fundamentally inconsistent with the method of one or more political subdivision in which the taxpayer is licensed to engage in business and that the difference has, or is likely to, result in taxes on more than 100% of its gross receipts from all locations in the affected jurisdictions, the assessor shall make a good faith effort to reach an apportionment agreement with the other political subdivisions involved.

### **Sec. 9-5. Limitations and Extensions.**

(a) Where, before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to this ordinance, both the assessing official and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(b) Notwithstanding §58.1-3903 of the Code of Virginia for the base year, 1997 and continuing, 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 years. For years before 1997, the provision shall apply for the three preceding years.

### **Sec. 9-6. Appeals and Rulings.**

(a) Any person assessed with a licensing tax under this ordinance as the result of an audit may apply within 90 days from the date of the assessment to the assessing official 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 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 subsection 3(f) of this ordinance, but no further penalty shall be imposed while collection actions suspended.

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The term "jeopardized by delay" includes a finding that the application is frivolous or that a taxpayer desires (i) to depart quickly from the locality, (ii) to remove his property therefrom, (iii) to conceal himself or his property therein, or (iv) 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 ordinance as a result of an audit may apply within ninety (90) days of the determination by the assessing official on an application pursuant to subsection 6(a) above to the Tax Commission for a correction of such assessment. The Tax Commissioner shall issue a determination to the taxpayer within ninety (90) days of receipt for 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 §58.1-1824 of the Code of Virginia, and the Tax Commissioner may issue an order correcting such assessment pursuant to §58.1-1822 of the 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 of the 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 has ruled on it.

(d) On receipt of a notice of intent to file an appeal to the Tax Commissioner under subsection 6(c) 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 subsection 3(f), 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 subsection 6(b) above.

(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 (i) there is a change in the law, a court decision, 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.

### **Sec. 9-7. Recordkeeping and Audits.**

Every person who is assessable with a license tax shall keep sufficient records to enable the assessor to verify the correctness of the tax paid for the license years assessable and to enable

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the assessor to ascertain what is the correct amount of tax that was assessable for each of those years. All such records, books of accounts and other information shall be open to inspection and examination by the assessor in order to allow the assessor to establish whether a particular receipt is directly attributable to the taxable privilege exercised within this jurisdiction. The assessor shall 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 shall be sent to the assessor's office upon demand.

### **Sec. 9-8. Exclusions and deductions from "gross receipts".**

(a) General Rule. Gross receipts for license tax purposes shall not include any amount not derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business or profession.

(b) The following items shall be excluded from gross receipts:

1. Amounts received and paid to the United States, the Commonwealth of Virginia or any country, city or town for the Virginia retail sales or use tax, or for any local sales tax or any local excise tax cigarettes, for any federal or state excise taxes on motor fuels.
2. Any amount representing the liquidation of a debt or conversion of another asset to the extent that the amount is attributable to a transaction previously taxes (e.g. the factoring of accounts receivable created by sale which have been included in taxable receipts even though the creation of such debt and factoring are a regular part of its business).
3. Any amount representing returns and allowances granted by the business to its customer.
4. Receipts which are proceeds of a loan transaction in which the licensee is the obligator.
5. Receipts representing the return of a principal of a loan transaction in which the licensee is the creditor, or the return of principal or basis upon the sale of a capital asset.
6. Rebates and discounts taken or received on account of purchases by the licensee. A rebate or other incentive offered to induce the recipient to purchase certain goods or services from a person other than the offeror, and which the recipient assigns to the licensee in consideration of the sale of goods and services shall not be considered a rebate or discount to the licensee's gross receipts together with any handling or other fees related to the incentive.
7. Withdrawals from inventory for purposes other than sale or distribution and for which no consideration is received and the occasional sale or exchange of assets other than inventory, whether or not a gain or loss is recognized for federal income tax purposes.
8. Investment income not directly related to the privilege exercised by a licensable

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business not classified as rendering financial services. This exclusion shall apply to interest on bank accounts of the business, and to interest, dividends and other income derived from the investment of its own funds in securities and other types of investments unrelated to the licensed privilege. This exclusion shall not apply to interest, late fees and similar income attributable to an installment sale or other transaction that occurred in the regular course of business.

- (c) The following shall be deducted from gross receipts or gross purchases that would otherwise be taxable:
1. Any amount paid for computer hardware and software that are sold to a United States federal or state entity provided that such property was purchased within two years of the sale to said entity by the original purchaser who shall have been contractually obligated at the time of resale and shall apply to only the original cost of the property and not to its resale price, and the deduction shall not apply to any of the tangible personal property which was the subject of the original resale contract if it is not resold to a state or federal government entity in accordance with the original contract obligation.
  2. Any receipts attributable to business conducted in another state or foreign country in which the taxpayer is liable for an income or other tax based upon income.

### **Sec. 9-9. License a personal privilege.**

(a) Every license shall be held to confer a personal privilege to transact the business, employment or profession which may be the subject of the license and shall not be exercised except by the person licensed, unless specifically authorized by the license ordinance to do so.

(b) A license other than to authorize the conduct of a profession may be assigned to any person to whom it might have been originally granted and, in the event of the death of the licensee, the license may be assigned by his personal representative in a like manner and with the like effect as might have been done by the licensee himself. If the license was obtained or had its validity by reason of a certificate of any court, or of any oath or bond, the assignment shall not be valid without a like certificate in favor of the assignee and a like oath or bond by the assignee as was required for the original grant. A license when assigned shall be a personal privilege to the assignee and shall not be exercised by any person other than the assignee, unless otherwise authorized by the license ordinance. If the license tax already paid by assignor is less than the license tax which would be assessable against the assignee but for the assignment, an additional license tax shall be paid by the assignee equal to the difference between the tax paid on the assignee equal to the difference between the tax paid on the assigned license and the license tax which would be otherwise assessable against the assignee.

### **Sec. 9-10. Separate license for member of firm practicing profession of calling.**

A separate license shall be obtained by each member of a firm or company of persons practicing any profession or calling which is regulated by the laws of this Commonwealth, for the practicing of which profession or calling a license is required by the license ordinance.

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### **Sec. 9-11. Effect of change in partners or name of firm.**

No change in the name of a firm, nor the taking on of a new partner, nor the withdrawal of one or more of the firm, shall be considered as commencing business, but if any one or more of the partners remain in the firm, the business shall be regarded as continuing. If they dissolve and one or more of the partners continue business, any tax on the purchases, sales or profits of the business, which might otherwise be chargeable to the firm, may be apportioned among them according to the justice of the case.

### **Sec. 9-12. License may be altered when place of business changed.**

When a person has obtained a license to carry on any business, employment or profession at any definite place in the Town and desires to remove to any other place in the Town and wishes his or her license altered accordingly, the Town Treasurer shall make such alteration, subject however, to the provisions of the applicable zoning ordinance.

### **Sec 9-13. Display of license.**

Each license tax receipt or other certificate showing the payment of a license tax imposed by the license ordinance is to be displayed in a conspicuous place at the licensee's regular place of business or profession, in order that any police officer of the Town may inspect it at any and all reasonable time. All others shall either carry with them on their person or have affixed to their vehicle used in their trade such license receipt or certificate, and promptly display it when called upon by any police office of the Town to do so.

### **Sec. 9-14. Doing business without a license/failure to display a license unlawful.**

It shall be unlawful for any person to engage in any business, trade, occupation, calling, profession, vocation or activity within the Town for which a Town license is required or upon which a Town license or privilege tax is levied, assessed, imposed or denied in the license ordinance without having paid for a currently valid Town license. In like manner, it is unlawful to fail to display the license as set forth in Section 9-13 of this ordinance.

## **ARTICLE II. License Tax Rates**

### **Sec. 9-15. License Fee and Tax.**

Except as otherwise provided in Sec 58.1-3712 (business of severing coal or gases from the earth), 58.1-3712.1 (business of severing oil from the earth) and 58.1-3713 (local coal and gas road improvement tax) of the Code of Virginia, every such person or business with annual gross receipts shall be assessed and required to pay annually a license tax on all the gross receipts of such persons included as provided in this ordinance at a rate set forth below for the class of enterprise listed:

*(State law reference 58.1-3708)*

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- 1) For contractors and persons constructing for their own account for sale, a license fee of \$15.00 per annum is due only if gross receipts are \$10,000.00 or less. A license tax of \$.15 per \$100.00 of gross receipts is due only if gross receipts are in excess of \$10,000.00, in accordance with and subject to the provisions and limitations set forth in Code of Virginia, Sec 58.1-3714 and 58.1-3715.
- 2) For retailers, a license fee of \$15.00 per annum is due only if gross receipts are \$10,000.00 or less. A license tax of \$.15 per \$100.00 of gross receipts is due only if gross receipts are in excess of \$10,000.00
- 3) For financial, real estate and professional services, a license fee of \$15.00 per annum is due only if gross receipts are \$10,000.00 or less. A license tax of \$.15 per \$100.00 of gross receipts if gross receipts are in excess of \$10,000.00
- 4) For repair, personal and business services and all other businesses and occupations not specifically listed or exempted in this article or otherwise by law, a license fee of \$15.00 per annum is due only if gross receipts are \$10,000.00 or less. A license tax of \$.15 per \$100.00 of gross receipts is due only if gross receipts are in excel of \$10,000.00. (*State law reference 58.1-3706(a)(4)*).
- 5) For wholesalers, a license fee of \$15.00 per annum is due only if purchases are \$10,000.00 or less. A license fee of \$.05 per \$100.00 of purchases is due only if purchases are in excess of \$10,000.00 in accordance with and subject to the provisions and limitations set forth in Code of Virginia, Sec 58.1-3716.
- 6) For carnivals, circuses and speedways, \$75.00 for each day or any part thereof that any performance or exhibition or race is presented and shall be paid in advance of any performance, exhibition or race held in this jurisdiction (*State law reference 58.1-3728*);
- 7) For fortune tellers, clairvoyants and practitioners of palmistry, \$1,000.00 per year. The term "fortune teller" shall include any person who, for compensation, pretends to tell fortunes or assumes to act as clairvoyant or to practice palmistry or phrenology (*State law reference 58.1-3726*);
- 8) For massage parlors, \$5,000.00 per year. The term "massage parlor" includes any place in which massages are administered, for consideration, to patrons. The term "massage," as used in this section, includes any act of rubbing, stroling or kneading any part of the body with the hand or an instrument, other than under the supervision of a licensed physician. Individuals licensed by the Commonwealth of Virginia as Chiropractors are specifically excluded from the definition of massage parlor (*State Law reference 58.1-3706(A)(4)*). Individuals certified through the State Board of Nursing as Certified Massage Therapists are specifically excluded from the definition of massage parlor, and shall be taxed at the professional service rate; (revised 4/99)

## LICENSE AND OCCUPATION TAXES

- 9) For itinerant merchants or peddlers, \$50.00 per year, or \$.15 per \$1000.00 of gross receipts, whichever is greater, not to exceed \$500.00 per year (*State law reference 58.1-3706(A)(4)*).

Here the term "peddler" means any persons who shall carry from place to place any goods, wares or merchandize and offer to sell or barter the same, or actually sell or barter the same. This section shall not apply to a peddler at wholesale or to those who sell or offer for sale in persons 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.

Here the term "itinerant merchant" means any person who engages in, does, or transacts any temporary or transient business in Town and who, for the purpose of carrying on each business, occupies any location for a period of less than one year.

- 10) For photographers, \$10.00 per year (*State law reference 58.1-3727*).
- 11) For savings and loan associations and credit unions \$50.00 per year or \$.15 per \$100.00 of gross receipts, whichever is greater (*State law reference 58.1-3730*).
- 12) For direct sellers as defined in Sec 58.1-3719.1 of the Code of Virginia as amended, with total annual sales in excess of \$4,000.00, \$.15 per \$100.00 of total annual retail sales or \$.05 per \$100.00 of total annual wholesale sales, whichever is applicable.

(Amended 11-4-08)

Sec 9-16 through 9-55 Reserved

### **Sec. 9-56. Public Service Companies.**

(a) The annual license fee for public service companies shall be one-half of one percent of the gross receipt of such business accruing to such company from sale to the ultimate consumer in the town

(b) "Public service company" includes every corporation, business or association doing the business of furnishing water or heat, light and power, whether by means of electricity or gas, and telephone or telegraph companies, other than such companies owned and operated by the Town.

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(c) Charges for long distance calls made by a telephone company shall not be considered receipts of business in the Town.

(Code 1975, §7-28)

*Cross Reference – definitions and rules of construction generally, §1-2*

*State Law Reference – local license tax on certain public service companies, Code of Virginia §58.1-3731.*

### **Sec. 9-57 – 9-61 Reserved**

### **Sec. 9-62. Dealers in precious metals and gems.**

(a) Scope. This section deals primarily with the purchases of particular goods and where the provisions of this section are inconsistent with the general provisions of this chapter, the provisions of this section shall prevail.

(b) Definitions. For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them by this subsection:

*Dealer* means any person engaged in the business of:

1. Purchasing secondhand precious metals or gems,
2. Removing in any manner precious metals or gems from manufactured articles not then owned by the persons; or
3. Buying, acquiring, or selling precious metals or gems removed from manufactured articles.

*Dealer* includes all employers and principals on whose behalf a purchase is made, and any employee or agent who makes and purchase for or on behalf of his employer or principal. The definition of dealer shall not include persons engaged in the following:

1. Purchases of precious metals or gems directly from other dealers manufacturers, or wholesalers for retail or wholesale inventories, provided that the selling dealer has complied with the provisions of this section.
2. Purchases of precious metals or gems from a qualified fiduciary who is disposing of the assets of an estate being administered by the fiduciary.
3. Acceptance by a retail merchant of trade-in merchandise previously sold by the retail merchant to the person presenting that merchandise for trade-in.
4. Repairing, restoring or designing jewelry by a retail merchant, if such activities are within his normal course of business.
5. Purchases of precious metals or gems by industrial refiners and manufacturers, insofar as such purchases are made directly from retail merchants, wholesalers, dealers, or by mail originating outside the state.
6. Persons regularly engaged in the business of purchasing and processing non-precious scrap metals which incidentally may contain traces of precious metals recoverable as a byproduct.

## LICENSE AND OCCUPATION TAXES

*Precious Metals* means any item containing as part of its composition in any degree, gold, silver or platinum.

*Gem* means any item containing or having any precious or semi-precious stones either separate or contained as a part of another object.

(c) Permit required. Every dealer or employee thereof shall apply to the chief of police for a permit to operate as such and shall pay a \$200.00 application fee. The chief of police shall issue a permit to the applicant after the following conditions and other requirements of this section are satisfied:

1. After a waiting period of seven days.
2. After the applicant satisfies the chief of police of his good character and that he has not been convicted within the preceding seven years of a felony or a crime of moral turpitude.
3. The application is marked "approved" and signed by the chief of police or his designee.

(d) Same information on application. Information which shall be required on the application shall include the applicant's full name, aliases, addresses for the past three years, age, date of birth, sex, fingerprints and photographs, and where applicable, the name, address, telephone number and personal identification of his employer, if any and in addition the location of the place where the business is to be conducted. The permit shall be valid for a period of six months from the date of issuance but may be renewed for an additional six-month period upon application for renewal. Any change of location of business shall be reported promptly to the chief of police.

(e) Duties of dealer. No dealer may purchase precious metals or gems or make loans for which precious metals or gems are received and held as security, or otherwise act as a dealer, without a permit as provided for herein and without complying with all the other provisions of this section.

(f) Permit as privilege. The permit issued under the provisions of this section shall be a personal privilege and shall not be transferable, nor shall there be any abatement of the fee for such permit by reason of the fact that the dealer shall have exercised the privilege for any period of time less than that for which it was granted. The permit shall at all times be displayed prominently by the dealer on his business premises.

(g) False statements. Any false statement made on the application shall void the permit ab initio.

(h) Records to be kept; copy furnished to local authorities.

1. Every dealer shall keep at his place of business an accurate and legible record of

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each purchase of precious metals or gems. The record of each purchase shall be retained by the dealer for at least 24 months and shall set forth the following:

- a. A complete description of all precious metals or gems purchased from each seller. The description shall include all names, initials, serial numbers or other identifying marks or monograms on each item purchased, the true weight or carat of any gem and the price paid for each item;
- b. The date, time and place of receiving the item purchased;
- c. The full name, residence address, work place, home and work telephone numbers, date of birth, sex, race, height, weight, hair and eye color, and other identifying marks;
- d. Verification of the identification by the exhibition of a government-issued identification card such as a driver's license or military identification card. The record shall contain the type of identification exhibited, the issuing agency, and the number thereon; and
- e. A statement of ownership from the seller.

2. The information required by subsections (a)a. through c. shall appear on each bill of sale for all precious metals and gems purchased by a dealer, and a copy shall be mailed or delivered within 24 hours of the time of purchase to the chief of police.

(i) Minor; non-owners. No dealer shall purchase or make a loan on precious metals or gems from any seller who is under the age of 18. No dealer shall purchase or make a loan on precious metals or gems from anyone whom the dealer believes, or has reason to believe, is not the owner of such precious metals or gems.

(j) Retention time. The dealer shall retain either within the Town or within the county all precious metals or gems purchased or held as security for a minimum of ten days from the time of filing the record of purchase with the chief of police. During such period of time no change of any nature shall be made to any item containing precious metals or gems.

(k) Bond or letter of credit required of dealers when permit obtained. Each dealer at the time of obtaining a permit shall enter into a recognizance to the town secured by a corporate surety authorized to do business in this state, in the penal sum of \$10,000.00 conditioned upon due observance of the terms of this section. In lieu of a bond, a dealer may cause to be issued by a bank authorized to do business in the state a letter of credit in favor of the Town for \$10,000.00. A single bond upon an employer or principal may be written or a single letter of credit issued to cover all employees and all transactions occurring at a single location.

(l) Persons aggrieved. Any person aggrieved by a dealer's violation of the provisions of this section and who recovers a final judgment against such dealer therefor may maintain an action in his own name upon the dealer's bond.

(m) Penalties: first and subsequent offenses.

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1. Any person convicted of violating any of the provisions of this section shall be guilty of a Class 2 Misdemeanor for the first offense. Upon conviction of any subsequent offense he shall be guilty of a Class 1 Misdemeanor.
2. Upon the first conviction of a dealer for violation of any provision of this section, the chief of police may revoke the dealer's permit for one full year from the date the conviction becomes final. Such revocation shall be mandatory upon a second conviction.

(Ord of 12-2-90, §7-34)

*Cross Reference – Definitions and rules on construction generally, §1-2.*

*State law reference – Precious metals dealers, Code of Virginia, §54.1-4100 et seq; local ordinances, Code of Virginia, §54.1-4111.*

### ARTICLE III, REGULATION OF PAWN BROKERS

#### Sec. 9-63. Definitions.

(a) Pawn Broker defined. For purposes of this section "pawn broker" means any person, partnership, corporation, or other entity who lends or advances money or other things for profit on the pledge and possession of tangible personal property, or other valuable things, other than securities or written or printed evidences of indebtedness, of title, or who deals in the purchasing of personal property or other valuable things on condition of selling the same back to the seller at a stipulated price.

*State law references – Code of Virginia §15.2-1114; §54.1-4000.*

(b) Recordkeeping. Every pawnbroker doing business in the Town of Stephens City shall keep at his place of business a legible record of each purchase, loan, or transaction made by him or any of his employees or agents in the course of business.

1. Each record shall include:
  - a. A description, serial number, and a statement of ownership by the person selling pawning, pledging, or consigning the goods received by the pawnbroker;
  - b. The time, date and place of the transaction;
  - c. The price paid or the item exchanged for the property, or the amount loaned to the person pledging the goods and the rate of interest on such loan;
  - d. The full name, residence address, telephone number, and driver's license number or other form of identification of the person selling, pawning, pledging, or consigning the goods, together with a description of such person including height, weight, date of birth, race, gender, hair and eye color, and any identifying marks;
  - e. The fees charged by the pawnbroker, itemizing each fee charged;
  - f. Verification of the identification by the exhibition of a government issued photo-identification card. The record shall indicate the type of identification,

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the issuing agency, and the identification number thereon. If the seller, pawner, pledgor, or consignor or purchaser does not have a government issued photo identification card, the record shall contain verification of two other forms of identification including type and issuer;

- g. All other facts and circumstances in the transaction, and;
- h. The terms and conditions of the loan, including the period for which the loan may be made.

2. Every pawnbroker shall at the time of each loan deliver to the person pawning or pledging anything a memorandum or note, signed by him containing the above information.

*State law reference §54.1-4004*

3. A lost-ticket fee of \$5.00 maximum may be charged, provided that the pawner is notified of the fee on the ticket.

*State law reference §54.1-4004, 54.1-4009*

(c) Police access. Every pawnbroker shall admit to his premises, during regular business hours, any duly authorized law enforcement officer for the Town of Stephens City to examine the transaction record of the dealer and search for any article listed in the transaction record without the formality of a warrant. The officer may search for and take possession of any article known to him to be missing, or known or believed by him to have been stolen. However, the officer shall not take possession of any article without providing to the pawnbroker a receipt.

*State law reference §15.2-1114, §54.1-4009 and §54.1-4011*

(d) Reporting. Every pawnbroker shall prepare a written report at the end of each day of all goods, articles or things pawned or pledged with him that day and shall file such report with the Town Chief of Police at the Town Office not later than noon the next business day. Such report shall include the pledgor's name, residence, and driver's license number or other form of identification, and a description of the goods, articles or other things pledged and shall be in writing and clearly legible to any person inspecting it.

*State law reference §15.2-1114, §54.1-4009 and §54.1-4010*

(e) Limitations. Not more than three (3) places within the Town of Stephens City shall be licensed where the business of a pawnbroker, including a pawnbroker's sales, may be conducted. Licenses shall not be transferable. However, in the event that a properly licensed pawnbroker sells his business and the Circuit Court of Frederick County authorizes the Town to issue to the purchaser a new license for the same location, if the purchaser has not been convicted of a felony or a crime involving moral turpitude in the last ten years, and otherwise completes the Town licensing, the Town may issue a new license to the purchase of the business.

Pawned items may not be sold or transferred to another location outside of the Town limits during the initial pawn or pledge period, which is thirty days plus a grace period of fifteen days unless otherwise agreed to by the pawner in writing, and unless a statement of ownership is obtained from the pawner. No property received on deposit or pledge by any pawnbroker shall

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be disfigured or its identity destroyed or affected in any manner so long as it continues in pawn or in the possession of the pawnbroker while in pawn.

*State law reference §15.2-1114, §54.1-4009 and §54.1-4002, 4005, 4012.*

(f) Licensing. Upon authorization of the Frederick County Circuit Court, the Police Department of the Town of Stephens City may issue a pawnbroker license upon payment of a one hundred dollar (\$100.00) licensing fee, payment of a fee to cover the expense of a background check and satisfaction of the requirements herein. The applicant shall be given a license if he has satisfied the chief of police of his good character and he has not been convicted within the last ten (10) years of a felony or a crime of moral turpitude, including, but not limited to, larceny, receiving stolen property, and fraud. Information required on the application shall include the applicant's full name, aliases, or trading names, address, age, social security number, sex fingerprints, and photograph. The application shall also include the name, address and telephone number of all of the applicant's employers within the previous seven (7) years, if any, and the location of the site at which the applicant wishes to operate as a pawnbroker. The application shall also include a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth. Licenses shall be valid for one (1) year from the date of issuance and may be renewed in the same manner as the initial license was obtained. Once the chief of police is ready to issue the license, the applicant must then furnish the chief with proof of the existence of a current bond and surety in the minimum amount of \$50,000.00 to secure the payment of any judgment obtained against a licensed pawnbroker for the pawnbroker's misconduct. With the Town of Stephens City a pawnbroker may only operate his business from the location specified in his application. The license shall not be transferable. Obtaining a license from the Police Department does not indicate that the applicant has complied with all other Town regulations or permits, including but not limited to zoning restrictions.

*State law reference §15.2-1114, §54.1-4009 and §54.1-4001, 4003.*

(g) Penalty for violation of ordinance. Any person who violates any provision of this section shall be guilty of a Class 4 misdemeanor. Each day's violation shall constitute a separate violation. If the holder of a pawnbrokers license is found guilty of two (2) violations of this section within any one year period, the chief of police may administratively revoke or suspend the violator's license to operate as a pawnbroker without additional notice or the right to a hearing.

*State law reference §15.2-1114, §54.1-4010.*