

01-115

**TAXATION: LICENSE TAXES — LOCAL OFFICERS –
COMMISSIONERS OF THE REVENUE – TREASURERS —
REVIEW OF LOCAL TAXES — GENERAL PROVISIONS OF
TITLE 58.1.**

Treasurer may not demand payment of business, professional and occupational license taxes that have not been assessed. Taxpayer is under no obligation to remit such tax payments until they are assessed and due. To extent confidential tax information maintained by commissioner of revenue needs to be obtained by treasurer or bank acting as depository, dissemination of otherwise confidential taxpayer information is allowable.

The Honorable Geraldine M. Whiting
Commissioner of the Revenue for Arlington County
March 5, 2002

You ask whether a local treasurer may demand payment of business license taxes prior to the assessment of such taxes or filing of a tax return.

Chapter 37 of Title 58.1, §§ 58.1-3700 through 58.1-3735 of the *Code of Virginia* contains the enabling legislation for the local assessment of business license taxes. Section 58.1-3703(A) authorizes a locality to assess a business, professional and occupational license ("BPOL") tax on the gross receipts of any person, firm and corporation that is operating a licensable business within the locality. Section 58.1-3700.1 defines "assessment" to 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." Section 58.1-3703.1 specifies that every ordinance levying a BPOL tax shall include provisions regarding, among others, the due dates for filing returns and payment of taxes.¹

The duties of commissioners of the revenue are set out specifically in Article 1, Chapter 31 of Title 58.1, §§ 58.1-3100 through 58.1-3122.2. Section 58.1-3107 provides that the local commissioner of the revenue "shall obtain ... tax returns from every taxpayer within his jurisdiction who is liable ... to file such return with him for all taxes assessed by his office." Additionally, § 58.1-3109(1) requires the commissioner to review the lists of all persons licensed by him

and assess additional license taxes if necessary. Section 58.1-3127(A) requires the local treasurer to collect amounts payable into the locality's treasury. Additionally, "[t]he treasurer, *after* the due date of any tax or other charge collected by such treasurer," shall proceed with collection actions upon the failure or refusal of a taxpayer to pay the amounts owed.²

A fundamental rule of statutory construction is that statutes relating to the same subject should be considered *in pari materia*.³ In this instance, certain statutes direct the commissioner of the revenue to assess BPOL tax. The treasurer is statutorily directed to collect the tax in accordance with the appropriate due dates. Reading these statutes together, it is my opinion that the treasurer is not authorized to collect taxes until such taxes are assessed and due.⁴ Accordingly, the treasurer may not demand payment of BPOL taxes that have not been assessed.

You also inquire whether a taxpayer may refuse to pay taxes in response to the treasurer's payment notice for taxes which have not been assessed. Although § 58.1-3920 authorizes the voluntary pre-payment of some taxes in accordance with certain conditions expressed in the statute, tax payments are not due until such time as mandated by an applicable statute or ordinance.⁵ Accordingly, it is my opinion that a taxpayer is under no obligation to remit BPOL tax payments until they are assessed and due.

Lastly, you inquire whether a treasurer or bank is entitled to confidential tax information maintained by a commissioner of the revenue regarding a taxpayer prior to a tax assessment being made. As you are aware, the § 58.1-3 prohibition against divulging confidential taxpayer information is not applicable to "[a]cts performed or words spoken or published in the line of duty under the law."⁶ Thus, to the extent such information is necessary for the treasurer to fulfill his duty to collect BPOL taxes, the dissemination to him or his employees of otherwise confidential taxpayer information is allowable under § 58.1-3.⁷ To the extent such information needs to be obtained by a bank acting as a depository,⁸ this Office has previously ruled that the dissemination to the bank of otherwise confidential taxpayer information is allowable under § 58.1-3.⁹

¹Va. Code Ann. § 58.1-3703.1(A)(2) (Michie Repl. Vol. 2000).

²*Id.* § 58.1-3919 (Michie Repl. Vol. 2000) (emphasis added).

³See *Prillaman v. Commonwealth*, 199 Va. 401, 405, 100 S.E.2d 4, 7 (1957). "*In pari materia*" is the Latin phrase meaning "[o]n the same subject; relating to the same matter." Black's Law Dictionary 794 (7th ed. 1999).

⁴*But see* Va. Code Ann. § 58.1-3920 (Michie Repl. Vol. 2000) (authorizing treasurer to accept voluntary prepayment of taxes for which return is not required to be filed with commissioner of revenue).

⁵With respect to BPOL taxes, generally, due dates for the filing of returns and tax payments are prescribed in the local ordinance. See § 58.1-3703.1 for statutory guidelines.

⁶Va. Code Ann. § 58.1-3(A)(2) (Michie Supp. 2001).

⁷See op. no. 01-043 to Hon. Geraldine M. Whiting, Arlington Co. Comm'r Rev. (Aug. 24, 2001).

⁸See Va. Code Ann. § 58.1-3149 (Michie Repl. Vol. 2000).

⁹See op. no. 01-043, *supra*. For example, in order for the bank to accept voluntary prepayment of taxes pursuant to § 58.1-3920, the bank may need access to some confidential taxpayer information in order to ensure proper credit to the taxpayer's account.

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