ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item
Meeting of February 21, 2009

DATE: February 1, 2009

SUBJECT: Advertise a public hearing on March 26, 2009, on proposed revisions to the County Code to remove inconsistencies in Chapter 11 (Licenses), Chapter 32 (Bank Franchise Tax), Chapter 63 (Utility Tax) and Chapter 64 (Short Term Rental Tax) and to streamline the late filing penalty procedure for the local bank franchise tax to make it consistent with the late filing penalty procedure for the state bank franchise tax.

C. M. RECOMMENDATIONS:

1. Authorize a public hearing on March 26, 2009, on proposed revisions to Chapters 11, 32, 63 and 64 of the County Code to remove internal inconsistencies and/or erroneous references to the State Code.

2. Authorize a public hearing on March 26, 2009, on proposed revisions to Chapter 32 of the County Code to streamline the late filing penalty procedure for the local bank franchise tax.

ISSUES:

1. Whether the County's tax ordinances should be updated to remove internal inconsistencies and ensure consistency with the State Code.

2. Whether the late filing penalty procedure for the local bank franchise tax should be streamlined to make it parallel with the late filing penalty procedure for the state bank franchise tax.

SUMMARY: Various chapters of the County Code make reference to sections of the Code of Virginia that have been changed since the corresponding sections of the County Code were adopted. In addition, some chapters of the County Code have internal inconsistencies. The proposed revisions to the County Code contained herein reflect issues that staff has identified over the past year.

In addition, it is proposed that Chapter 32 be amended to provide for a streamlined penalty for failure to comply with the section in a timely manner. The new penalty would parallel the

County Manager: _____

County Attorney: _____

Staff: Ray Warren, Commissioner of Revenue

penalty contained in the Code of Virginia for the state bank franchise tax and is modeled on a provision currently in effect in Roanoke County.

BACKGROUND: Section § 11-70 of the Arlington County Code stipulates that telephone companies must pay business license taxes in an amount equal to two dollars on each one hundred dollars of gross receipts from local telephone exchange service. The Code of Virginia § 58.1-3731 limits the amount of BPOL tax that can be imposed on telephone companies to $.50 per $100 of gross receipts. But the enactment clause of that code section grandfathered in higher rates in certain localities, including Arlington County. Under legislation enacted by General Assembly in 2006 (House Bill 568, codified as Chapter 780), the Virginia communications sales and use tax replaced most of the previous state and local taxes and fees on communications services, effective January 1, 2007. Among the HB 568's various provisions, it repealed the enactment clause that had grandfathered Arlington's ability to impose a BPOL tax on telephone companies greater than that allowed by § 58.1-3731, effectively subjecting Arlington County to the general cap contained in § 58.1-3731. In practice, the County has been in compliance with the State Code, as the Commissioner of Revenue has been assessing the license tax at the $.50 rate since the law took effect. However, §11-70 was never revised to reflect the new law.

Section § 63-5 of the Arlington County Code exempts residential users from utility taxes. However, this provision contradicts § 63-2(a)(3) and § 63-2(b)(3), which imposes a utility tax on residential customers. Revenue from this residential utility tax, which became effective in FY 2008, funds environmental initiatives as part of the County's Fresh AIRE campaign. Revenue from this tax is collected by the utilities and remitted on a monthly basis back to Arlington.

Sections § 32-1 through § 32-3 contain numerous references to sections of the State Code that have been repealed and/or recodified elsewhere. Likewise, § 32-5 contains a cumbersome penalty provision that requires the Commonwealth Attorney to seek a fine in Circuit Court when a filer fails to comply with the requirements of the law. This has never been used during the memory of anyone in the Commissioner of Revenue office. Given the extremely low fine ($100 - $500), it is unlikely that the Commonwealth Attorney would pursue such an action, essentially negating any enforcement procedure to compel timely filing of bank franchise tax returns. The state imposes a straightforward 5% penalty for late filing and late payment as do a number of other Virginia local jurisdictions. Adopting such a penalty locally would streamline the penalty procedure and restore and incentive to file in a timely manner.

Several sections of Chapter 64 make incorrect references to the definitions sections of that chapter. The definitions subsections are denoted by smaller case letters but the text of the chapter refers to non-existent numbered subsections. This was most likely a drafting error. The changes would conform the references to the definition subsections to their actual designations.

DISCUSSION: The changes would ensure the County Code's continued consistency with the State Code and eliminate internal inconsistencies. The changes would also create a penalty for

late filing or late payment that parallels the penalty provisions in the state bank franchise tax and other Virginia local jurisdictions.

FISCAL IMPACT: This ordinance change will have no impact on bank franchise tax collection, as the existing provision is never used. In addition, these changes will have no fiscal impact on the residential utilities tax, business license tax or short term rental tax as these proposed changes will not affect standard operating procedure.

Attachment A

AN ORDINANCE TO AMEND CHAPTER 11 (LICENSES) OF THE ARLINGTON COUNTY CODE RELATING TO THE LICENSE TAX PAID BY PUBLIC SERVICE CORPORATIONS

BE IT ORDAINED that Chapter 11 of the Arlington County Code is amended as follows:

§ 11-70. Public service companies.

(a) Repealed.

(b) *Telephone companies.* All telephone companies subject to assessment under Chapters 26 and 37 of Virginia Code Title 58.1 and which provide telecommunications services in the County shall pay annual license taxes as follows:

(1) ~~Two dollars ($2.00)~~ Fifty cents ($0.50) on each one hundred dollars ($100.00) of gross receipts from local telephone exchange service to the ultimate consumer in the County during the preceding calendar year; and

(2) Fifty cents ($0.50) on each one hundred dollars ($100.00) of gross receipts from sales to the ultimate consumer in the County of goods and services, other than local exchange, if any, during the preceding calendar year; excluding, however, from tax by the County all gross receipts from long distance telephone calls.

All sales of telecommunications services in the County by companies other than those subject to assessment under Chapters 26 and 37 of the Virginia Code are subject to business license tax under section 11-58 of this Chapter.

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Attachment B

AN ORDINANCE TO AMEND CHAPTER 32 (LICENSES) OF THE ARLINGTON COUNTY CODE RELATING TO THE ERRONEOUS REFERENCES TO THE STATE CODE AND THE PENALTY UPON BANKS FOR FAILURE TO COMPLY

BE IT ORDAINED that Chapter 32 of the Arlington County Code is amended as follows:

Chapter 32

BANK FRANCHISE TAX*

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* **Cross References:** Licenses generally, Ch. 11; bank stock tax, Ch. 28; security systems at banks, § 33-5 et seq.; cigarette tax, Ch. 39; transient occupancy tax, Ch. 40; fuel tax, Ch. 54; utility tax, Ch. 63.

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§ 32-1. Definitions.
§ 32-2. Imposition of county bank franchise tax.
§ 32-3. Filing of return and payment of tax.
§ 32-4. Effective date of chapter.
§ 32-5. Penalty upon bank for failure to comply with chapter.

§ 32-1. Definitions.

For the purposes of this chapter, the following words shall have the meanings ascribed to them by this section:

Bank shall be as defined in Section 58.1-1201 ~~58-485.01~~ of the Code of Virginia.

Net capital shall mean a bank's net capital computed pursuant to Section 58.1-1205 58-~~485.07~~ of the Code of Virginia. ~~(1-1-80)~~

§ 32-2. Imposition of county bank franchise tax.

(a) Pursuant to the provisions of Chapter 12 of Title 58.1 ~~Chapter 10.01 of Title 58~~ of the Code of Virginia and subject to such provisions, there is hereby imposed upon each bank located within this county a tax on net capital ~~equalling~~ equaling eighty (80) percentum of the state rate of franchise tax set forth in Section 58.1-1204 ~~58-485.06~~ of the Code of Virginia; provided, however, in no event shall the tax imposed hereunder be less than the minimum amount specified in § 58.1-1210 ~~paragraph 6 of Chapter 578 of the 1980 Acts of Assembly~~.

(b) In the event that any bank located within the boundaries of this county is not the principal office but is a branch extension or affiliate of the principal office, the tax upon such branch shall be apportioned as provided by Section 58.1-1211 ~~58-485.012~~ of the Code of Virginia. ~~(1-1-80)~~

§ 32-3. Filing of return and payment of tax.

(a) On or after the first day of January of each year, but not later than March 1 of any such year or within fifteen (15) days of adoption of this section, whichever is later, all banks whose principal offices are located within this county shall prepare and file with the commissioner of the revenue a return as provided by Section 58.1-1207 ~~58-485.013~~ of the Code of Virginia in duplicate which shall set forth the tax on net capital computed pursuant to Chapter 12 of Title 58.1 ~~Chapter 10.01 of Title 58~~ of the Code of Virginia. The commissioner of the revenue shall certify a copy of such filing of the bank's return and schedules and shall forthwith transmit such certified copy to the state department of taxation.

(b) In the event that the principal office of a bank is located outside the boundaries of this county and such bank has branch offices located within this county, in addition to the filing requirements set forth in subsection (a) hereof, any bank conducting such branch business shall file with the commissioner of the revenue of this county a copy of the real estate deduction schedule, apportionment and other items which are required by Sections 58.1-1207, 58.1-1211 or 58.1-1212 ~~58-485.012, 58-485.013 and 58-485.014~~ of the Code of Virginia.

(c) Each bank, on or before the first day of June of each year or within fifteen (15) days of the adoption of this section, whichever is later, shall pay into the treasurer's office of this county all taxes imposed pursuant to this chapter.
~~(1-1-80)~~

§ 32-4. Effective date of chapter.

The provisions of this chapter shall be effective for the year beginning m/m d/d, 2009 ~~January 1, 1980~~.
~~(1-1-80)~~

§ 32-5. Penalty upon bank for failure to comply with chapter.

~~Any bank which shall fail or neglect to comply with any provision of this chapter shall be not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00), which fine shall be recovered upon motion, after five (5) days' notice in the circuit court of this county. The motion shall be in the name of the commonwealth and shall be presented by the attorney for the commonwealth of this locality.~~
~~(1-1-80)~~

Any bank which fails to file a return or pay the tax required by this article or fails to comply with any provision of this article shall be subject to a penalty of five (5) percent of the tax due. If the commissioner of the revenue is satisfied that such failure is due to providential or other good cause, such return and payment of tax shall be accepted exclusive of such penalty, but with interest determined in accordance with section 58.1-15 of the Code of Virginia.

Attachment C

AN ORDINANCE TO AMEND CHAPTER 63 (UTILITY TAX) OF THE ARLINGTON COUNTY CODE RELATING TO EXEMPTIONS FROM THE UTILITY TAX

BE IT ORDAINED that Chapter 63 of the Arlington County Code is amended as follows:

§ 63-5. Exemptions from tax.

The United States of America, the Commonwealth of Virginia, and the political subdivisions, boards, commissions and authorities thereof, ~~residential users~~ and persons exempted from payment of real property taxes within Arlington County under state or federal law, are hereby exempted from the payment of tax imposed and levied by this Chapter with respect to the purchase of utility services.

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Attachment D

AN ORDINANCE TO AMEND CHAPTER 64 (SHORT TERM RENTAL TAX) OF THE ARLINGTON COUNTY CODE TO CORRECT INTERNAL SUBSECTION REFERENCES

BE IT ORDAINED that § 64-1, § 64-2, §64-4 and § 64-14 of Chapter 64 of the Arlington County Code are amended as follows:

§ 64-1. Definitions.

For purposes of this chapter the following words and phrases shall have the meanings respectively ascribed to them by this section:

(a) *A person is affiliated with another person* if either has a five (5) percent or greater ownership interest in the other, either directly or through a third person.

(b) *Certificate of registration* shall refer to the annual certificate issued by the Arlington Commissioner of the Revenue to persons engaged in the short-term rental business in Arlington County who make application for such certificate pursuant to section 64-4 of this chapter.

(c) *Commissioner of the revenue* shall mean the commissioner of the revenue of Arlington County, Virginia, and any of the commissioner's duly authorized deputies or agents.

(d) *County* shall mean Arlington County, Virginia.

(e) *Daily rental property* shall mean all tangible personal property held for rental and owned by a person engaged in the short-term rental business as defined in section ~~64-1(9)~~ 64-1(i) of this chapter, except trailers, as defined in Section 46.2-100(33) of the Virginia Code and other tangible personal property required to be licensed or registered with the department of motor vehicles, the department of game and inland fisheries or the department of aviation.

(f) *Gross proceeds* shall mean the total amount charged including penalties, late charges or interest, to each person for the rental of daily rental property from a short-term rental business with a valid certificate of registration, excluding any state and local sales taxes paid pursuant to Chapter 6 of Title 58.1 of the Virginia Code. Gross proceeds is the taxable basis for the daily rental tax.

(g) *Gross rental receipts* shall mean all proceeds from rentals during a calendar year, including rentals to persons affiliated with the lessor, except that proceeds from rental of personal property which also involves the provision of personal services for the operation of the personal property rented shall not be treated as gross receipts from rental. For purposes of this section the delivery and installation of tangible personal property shall not mean operation.

(h) *Person* shall mean and include individuals, firms, partnerships, associations, corporations, and combinations of individuals of whatever form and character.

(i) *Short-term rental business* shall include any person engaged in the short-term rental of daily rental property as defined in section ~~64-1(5)~~ 64-1(e) of this chapter if:

(1) Not less than eighty (80) percent of the gross rental receipts of such business in any year are from transactions involving rental periods of ninety-two (92) consecutive days or less, including all extensions and renewals to the same person or a person affiliated with the lessor; and, provided that,

(2) Any rental to a person affiliated with the lessor shall be treated as rental receipts for the purposes of the eighty (80) percent requirement to qualify as a short-term rental business.
(Ord. No. 89-29, 1-1-90)

§ 64-2. Levy and rate of daily rental tax.

Pursuant to Section 58.1-3510.1 of the Virginia Code, and in addition to all other taxes of every kind now or hereinafter imposed by law, Arlington County hereby levies and imposes on every person engaged in the short-term rental business a tax of one (1) percent on the gross proceeds of such business as defined in section ~~64-1(6)~~ 64-1(f). Such tax shall be in addition to the tax levied pursuant to Section 58.1-605 of the Virginia Code.
(Ord. No. 89-29, 1-1-90)

§ 64-4. Short-term rental business application for certificate of registration.

Every person engaging in the business of short-term rental, as defined in section ~~64-1(9)~~ 64-1(i) shall annually file an application for a certificate of registration with the commissioner of the revenue for each place of business in Arlington County from which short-term rental business will be conducted by the applicant. Such application shall be filed by January 31 of each year or within thirty (30) days of the beginning of a short-term rental business. The application shall be on a form prescribed by the commissioner and shall contain:

(a) The name under which the applicant intends to operate the rental business;

(b) The location in the county from which the rental business will be conducted as well as the location of the rental business headquarters;

(c) The figures for the previous year's business including the total gross receipts from all business, the total gross rental proceeds and the total receipts from short-term rental of daily rental property;

(d) A list of all tangible personal property owned by the applicant as of January 1 of the current year and used as short-term rental property;

(e) A list of all property leased or licensed to the short-term rental business as of January 1 of the current year, used for short-term rental, with the name and address of the owner of such property;

(f) Such other information as the commissioner may require; and

(g) An oath by the person making application or an officer, partner or duly authorized agent for such applicant, that they are in fact qualified for tax treatment as a short-term rental business, they shall collect only those daily rental taxes due under the law in the time and manner prescribed by law, and they shall remit all daily rental taxes collected or due and owing to the county.
(Ord. No. 89-29, 1-1-90)

§ 64-14. Effect of revocations of certification as short-term rental business.

If upon audit by the commissioner of the revenue of the preceding full year's gross proceeds and gross rental receipts, it is ascertained that a certified short-term rental business did not meet the criteria for certification set out in section ~~64-1(9)~~ 64-1(i), any current certification shall be revoked or renewal of certification shall be denied. In addition, the business shall not be treated for business license tax and business tangible property tax assessment as a certified short-term rental business for the preceding year and for the current year. The business shall be assessed any additional business license and business tangible property taxes found to be due.