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## Local Tax Layering

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### Introduction

Virginia has three types of localities: cities, counties, and towns.<sup>1</sup> Virginia cities are separate, independent entities; therefore, city government is the only local government that has authority within a city's boundaries.<sup>2</sup> In contrast, towns and counties overlap.<sup>3</sup> Although towns have their own governments, and counties may not assert certain powers within town boundaries without the town council's consent,<sup>4</sup> towns are technically located within a county's jurisdictional area. Accordingly, a particular area of Virginia may be located within both a town and a county.

The overlapping jurisdiction of county and town governments complicates local taxation. Generally, Virginia law allows counties and towns to "layer" their taxes. That is, both town taxes and the taxes of the overlapping county apply within a town's boundaries. However, occasionally Virginia law prohibits county-town tax layering. This issue brief summarizes those tax layering prohibitions. The appendix identifies and explains the relevant code provisions in more detail.

### Governing Law

Subtitle III of Title 58.1 of the Code of Virginia governs local taxation. It identifies certain categories of taxes that localities have the authority to levy, such as real property taxes and license taxes. The types of taxes described below are organized according to those tax categories. For the most part, Subtitle III provides that any county, city, or town may levy taxes in each of the categories, implying that layered county-town taxation is generally acceptable. Subtitle III also explicitly delineates areas within the general tax categories where tax layering is prohibited, reinforcing the implication that tax layering is usually valid. The summaries that follow identify and describe the various tax layering restrictions contained within each larger tax category.

### Property Taxes

#### *Real Property Taxes*

In order to fund transportation projects, "cities and counties"—not towns—within the Northern Virginia Transportation Authority and Hampton Roads metropolitan planning area may

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<sup>1</sup> See VA. Const. Art. VII § 1 (defining county, city, and town).

<sup>2</sup> See A.E. Dick Howard, *Commentaries on the Constitution of Virginia*, at 795 (Charlottesville: University Press of Virginia, 1974) ("A Virginia city is a primary unit of government, independent of the county in which it is situated.").

<sup>3</sup> See *id.* at 798 (stating that a "town remains part of the county and is subject to county taxes").

<sup>4</sup> See VA. Code § 15.2-1201 ("No powers or authority conferred upon the boards of supervisors of counties solely by this section shall be exercised within the corporate limits of any incorporated town except by agreement with the town council.").

separately classify and tax real property that is zoned for commercial or industrial use.<sup>5</sup> Because towns may not levy these specialized taxes for transportation funding, county-town tax layering is implicitly prohibited.

Any locality may adopt an ordinance providing for "use-value taxation" of real estate used for agricultural purposes.<sup>6</sup> Use-value taxation taxes agricultural land at a lower rate than would ordinarily be the case in order to incentivize and protect agricultural activity.<sup>7</sup> Generally, localities' use-value taxation ordinances must be uniform; that is, they must apply to all agricultural land. However, Virginia law authorizes a few counties to exclude certain agricultural land from a use-value assessment when that land is located in a development, or in an industrial or commercial zoning district.<sup>8</sup> In other words, while use-value tax layering is not explicitly prohibited, in that both counties and towns may impose use-value taxation, Virginia law does give certain counties a taxing authority that towns lack.

Any county or city may levy a severance tax on coal and gases extracted from land lying within its jurisdiction (or, in place of a real property coal and gas tax, counties and cities may levy license taxes on coal and gas; see "License Taxes" below).<sup>9</sup> Towns may not levy severance taxes, which necessarily prevents any county-town severance tax layering.

### *Tangible Personal Property Taxes*

Ordinarily, all types of localities may prorate taxes upon personal property moved to their jurisdictions after tax day.<sup>10</sup> However, only cities and counties may prorate such personal property taxes on manufactured homes, thereby implying that towns may not layer additional prorated taxes on top of those levied by the overlapping county.<sup>11</sup>

## **License Taxes**

Counties, cities, and towns may require businesses and professionals to obtain licenses and to pay a tax on those licenses.<sup>12</sup> Generally, unless a specific provision governs otherwise, county-town layering of license taxes is prohibited. When a town imposes license taxes, the overlapping county may not impose its county license taxes within the town's boundaries.<sup>13</sup> However, despite the general prohibition on license tax layering, the overlapping county may impose county license taxes within the town's boundaries if the town gives the county permission to do so.

All types of localities may also impose license taxes on contractors. While Virginia law does not explicitly prohibit the layering of contractor license taxes, the law does provide that contractors shall receive a credit towards their county license taxes equal to the amount they pay

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<sup>5</sup> VA. Code § 58.1-3221.3.

<sup>6</sup> VA. Code § 58.1-3231.

<sup>7</sup> See, e.g., Virginia Department of Conservation and Recreation website, <https://www.dcr.virginia.gov/land-conservation/tools06> ("When the locality accepts the application for the land use valuation, the property tax is a reflection of productivity rather than on fair market value that results in a substantially lower real property taxes on the land.").

<sup>8</sup> VA. Code § 58.1-3237.1.

<sup>9</sup> VA. Code § 58.1-3286.

<sup>10</sup> VA. Code § 58.1-3516.

<sup>11</sup> VA. Code § 58.1-3521.

<sup>12</sup> VA. Code § 58.1-3700.

<sup>13</sup> VA. Code § 58.1-3711.

in town license taxes.<sup>14</sup> In other words, while counties and towns can technically layer their contractor license taxes, a contractor subject to layered taxes is exempt from paying the county taxes, creating an indirect tax layering prohibition. Virginia law also provides that only counties with a county manager plan of government can impose a higher tax rate on certain federal contractors, thereby implicitly preventing towns within such counties from layering on a similar tax.<sup>15</sup>

Only counties and cities—not towns—may impose license taxes upon property bail bondsmen.<sup>16</sup> Because towns lack authority to levy such taxes, county-town layering is necessarily restricted.

As an alternative to imposing a real property coal and gas severance tax (see "Real Property Taxes" above), counties and cities may impose several license taxes upon individuals engaged in severing gases and coal from the earth.<sup>17</sup> Towns lack the authority to impose such taxes.

## Taxes on Legal Documents

### *Recordation Taxes*

Only cities and counties may impose recordation taxes, which are taxes levied on officially recorded documents, such as deeds.<sup>18</sup> Because towns lack authority to levy such taxes, county-town tax layering is necessarily restricted.

### *Probate Taxes*

Only cities and counties may impose taxes on the probate of a will; accordingly, county-town tax layering is restricted.<sup>19</sup>

## Miscellaneous Taxes

### *Consumer Utility Taxes*

Any county, city, or town may levy taxes on consumers of utility services provided within its jurisdiction.<sup>20</sup> However, when a town imposes such taxes upon consumers who use utilities provided by a municipal company, the county in which the town is located may not layer on its own consumer taxes within the town's boundaries.<sup>21</sup>

### *Admissions Taxes*

Only certain counties, such as Fairfax and Arlington, may levy taxes on admission fees charged for attendance at events.<sup>22</sup> No towns are authorized to do so.

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<sup>14</sup> VA. Code § 58.1-3714(C).

<sup>15</sup> VA. Code § 58.1-3706(D)(3).

<sup>16</sup> VA. Code § 58.1-3724.

<sup>17</sup> See VA. Code §§ 58.1-3712, 58.1-3713, 58.1-3714, and 58.1-3741.

<sup>18</sup> VA. Code § 58.1-3800.

<sup>19</sup> VA. Code § 58.1-3805.

<sup>20</sup> VA. Code § 58.1-3814.

<sup>21</sup> VA. Code § 58.1-3814(C).

<sup>22</sup> VA. Code § 58.1-3818.

### *Transient Occupancy Taxes*

Transient occupancy taxes are taxes imposed on hotels, campgrounds, and other facilities rented out for short-term residence.<sup>23</sup> Current Virginia law authorizes only counties to impose transient occupancy taxes. However, the law also allows cities and towns that had transient occupancy taxes in place before the current law's enactment to continue imposing their taxes.<sup>24</sup> If a town does have such a preexisting transient occupancy tax, tax layering is prohibited. The county within which the town is located may not apply its transient occupancy taxes within the town's boundaries without the town's permission.

### *Cigarette Taxes*

Generally, county-town layering of cigarette taxes is prohibited. When a town imposes cigarette taxes, the county in which the town is located may not levy county cigarette taxes within the town's boundaries.<sup>25</sup> However, a county may impose its cigarette tax within the boundaries of a town in its jurisdiction if it receive the towns' permission to do so.

### *Food and Beverage Taxes*

Under current Virginia law, only counties have the authority to levy taxes on the sale of food and beverages.<sup>26</sup> However, current law also allows cities and towns that had food and beverage taxes in place before the current law's enactment to continue imposing their taxes.<sup>27</sup> If a town has such a preexisting food and beverage tax, the county within which the town is located may not impose a food and beverage tax within the town's boundaries without the town's permission.

## **Conclusion**

Generally, Virginia law permits county-town tax layering. However, the local tax code does identify some categories of taxes that towns lack the authority to levy, such as coal and gas taxes, thereby preventing tax layering in those areas. The local tax code also explicitly prohibits county-town tax layering without the town's consent for certain taxes.

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<sup>23</sup> VA. Code § 58.1-3819.

<sup>24</sup> VA. Code § 58.1-3819(C).

<sup>25</sup> VA. Code § 58.1-3830(B).

<sup>26</sup> VA. Code § 58.1-3833(A).

<sup>27</sup> VA. Code § 58.1-3833(C).

## Appendix

The following table identifies the specific code provisions within the larger local tax code sections that explicitly or implicitly limit tax layering. It also explains the provisions and provides notes on the provisions where necessary.

Subject/ Section	Provision	Language	Explanation
Real Estate/ Ch.32	§ 58.1-3221.3	"In the <b>cities and counties</b> " within the Northern Virginia Transportation Authority and Hampton Roads metropolitan planning area, real property zoned for commercial/industrial use is a separate class of real property for taxation purposes. "[T]he governing body of any locality" within the two areas may impose additional taxes on the separate class of property to use for transportation projects.	The initial use of "cities and counties" suggests that the later use of "locality" refers to only cities and counties--towns aren't included. Therefore, only cities and counties may impose the additional taxes the provision references; towns may not layer on their own taxes.
	§ 58.1-3237.1	Ordinarily, "[a]ny county, city or town . . . May adopt an ordinance to provide for the use value assessment and taxation" of real estate used for agricultural purposes (from § 58.1-3231). Section 58.1-3237.1 identifies specific counties ("Albemarle, Arlington, etc. . . . <b>Count[ies]</b> ") that can not only provide for use-value assessment of agricultural land, but also exclude certain agricultural land from use-value assessment if the land is located in a "planned development, industrial or commercial zoning district."	Most localities may only enact blanket use-valuation ordinances--use-valuation must apply to all agricultural land, or no agricultural land at all. But this provision gives certain counties the ability to specifically tailor their use-value ordinances by exempting some agricultural land located in special zoning districts. In other words, this provision grants a few counties authority over use-value taxation that is not granted to other localities, including towns. Thus, while this provision doesn't prevent tax layering in a traditional sense, in that neither counties nor towns are prohibited from assessing use-value taxes, it does give some counties a tax power that towns lack.
	§ 58.1-3286	". . . [A]ny <b>county or city</b> may impose by ordinance a severance tax on all coal and gases extracted from the land lying within its jurisdiction. . . ."	The provision's reference to counties and cities, but omission of any reference to towns, suggests that only counties and cities may impose coal and gas severance taxes.

Subject/ Section	Provision	Language	Explanation
			NOTE: If a county/city levies taxes under this provision, it may not levy coal/gas taxes authorized by later code provisions.
Tangible Personal Property/Ch.35	§ 58.1-3521	"[A]ny <b>city or county</b> wherein a manufactured home . . . Is delivered or moved after January 1 . . . May quarterly prorate any property taxes which would have been collectible had such manufactured home been situated within such city or county on January 1 of that year."	This provision provides that cities and counties--towns are not referenced--may prorate taxes on manufactured homes moved to their jurisdictions after January 1st. In contrast, § 58.1-3516 authorizes cities, counties, <i>and</i> towns to prorate taxes on other personal property moved to their jurisdictions after tax day. The fact that § 58.1-3516 explicitly allows all localities to prorate personal property taxes, while § 58.1-3521 only references cities and counties, suggests that only cities and counties may levy prorated taxes on manufactured homes. The further suggestion is that towns are prohibited from layering additional prorated taxes on top of prorated county taxes on manufactured homes.
License/Ch.37	§ 58.1-3706(D)	“[I]n <b>any county operating under the county manager plan of government</b> . . . Persons, firms, or corporations designated as the principal or prime contractors receiving identifiable federal appropriations for research and development services . . . may be separately classified by any such county and subject to tax” at a rate above three cents per \$100 of federal funds received (the limit for all other localities’ tax rate for such federal contractors).	The provision says that only counties with a county manager plan of government can impose a higher tax rate on certain federal contractors. Therefore, the provision implicitly limits towns within those counties from imposing a similar tax. NOTE: Currently, only Henrico County has a county manager plan of government.
	§ 58.1-3711	Ch. 37 provides that, generally speaking, a locality may levy license taxes on the gross receipts attributable to a taxpayer's definite places of business within the locality. However, § 58.1-3711 states that " <b>any county license</b>	According to multiple Virginia attorney general and Virginia Department of Taxation opinions, the terms of § 58.1-3711 mean that "a county may impose such license taxes or fees only with

Subject/ Section	Provision	Language	Explanation
		<p><b>tax imposed pursuant to this chapter shall not apply within the limits of any town located in such county,</b> where such town now, or hereafter, imposes a town license tax on the same privilege. If the governing body of any town within a county, however, provides that a county license tax shall apply within the limits of such town, then such license tax may be imposed within such towns."</p>	<p>the town's permission"(2002 Va. Tax LEXIS 128; see also 2016 Va. Tax LEXIS 176, 2011 Va. Tax LEXIS 4, 1995 Va. AG LEXIS 101). In other words, layering of license taxes is prohibited unless the county receives the town's consent.</p> <p>NOTE: Section 58.1-3711 is a general rule that applies to all of Chapter 37, unless more specific provisions require otherwise. For example, §§ 58.1-3714 and 58.1-3715, which apply <i>specifically</i> to contractors' licenses, override the <i>general</i> prohibition on tax layering (1995 Va. AG LEXIS 101).</p>
	§ 58.1-3712	<p>"The governing body of any <b>county or city</b> may levy a license tax on every person engaging in the business of severing gases from the earth."</p>	<p>The provision's reference to counties and cities, but omission of any reference to towns, suggests that only counties and cities may impose gas severance taxes.</p> <p>NOTE: If a county/city levies taxes under this provision, it may not levy coal/gas taxes authorized by § 58.1-3286.</p>
	§ 58.1-3713	<p>"In addition to the taxes authorized under § 58.1-3712, any <b>county or city</b> may adopt a license tax on every person engaging in the business of severing gases from the earth . . . The moneys collected for each county or city from the taxes imposed under authority of this section . . . shall be paid into a special fund of such county or city to be called the Coal and Gas Road Improvement Fund . . . ."</p>	<p>The provision appears to allow counties and cities, but not towns, to levy an additional gas severance tax to be paid into a special road improvement fund.</p> <p>NOTE: If a county/city levies taxes under this provision, it may not levy coal/gas taxes authorized by § 58.1-3286.</p>

Subject/ Section	Provision	Language	Explanation
	§ 58.1-3713.4	"Notwithstanding the rate limitations established in §§ 58.1-3712 and 58.1-3713, a <b>county or city</b> may levy an additional license tax on every person engaging in the business of severing gases from the earth."	The provision allows a "county or city"--not a town--to levy additional gas severance taxes beyond those provided for in §§ 58.1-3712 and 58.1-3713.  NOTE: If a county/city levies taxes under this provision, it may not levy coal/gas taxes authorized by § 58.1-3286.
	§ 58.1-3714(C)	"If, within any county imposing a license tax on contractors, there is situated a town which imposes a similar tax upon contractors, the business, firm, corporation or <b>individual subject to such town license tax shall be entitled, upon displaying evidence that such town license taxes have been paid, to receive credit on the license taxes imposed by the county to the extent of the license taxes paid to such town.</b> "	While § 58.1-3711 generally prohibits county-town layering of license taxes, § 58.1-3714(C) permits such tax layering when the taxes are imposed on contractors. However, by providing that contractors receive a credit towards their county license taxes equal to the amount they pay on town license taxes, this provision provides a means to offset the potential burden on contractor taxpayers that tax layering creates.
	§ 58.1-3724	"The governing body of any <b>county or city</b> may by ordinance require that every [property bail bondsman] shall obtain a revenue license . . . ."	The provision's reference to counties and cities, but omission of any reference to towns, suggests that only counties and cities may impose licenses upon bail bondsmen.
Coal Severance/ Ch.37.1	§ 58.1-3741	"The governing body of any <b>county or city</b> may levy" severance license taxes on coal producers.	The provision's reference to counties and cities, but omission of any reference to towns, suggests that only counties and cities may impose coal severance taxes.  NOTE: If a county/city levies taxes under this provision, it may not levy coal/gas taxes authorized by § 58.1-3286.



<b>Subject/ Section</b>	<b>Provision</b>	<b>Language</b>	<b>Explanation</b>
Recordation/ Ch.38 Art.1	§ 58.1-3800	"[T]he governing body of any <b>city or county</b> is hereby authorized to impose a recordation tax . . . ."(from§ 58.1-3800.)	The article’s reference to “city or county,” but omission of any reference to “town,” indicates that only counties and cities may impose recordation taxes.
Probate/ Ch.38 Art.2	§ 58.1-3805	“[T]he <b>governing body of any county and the council of any city</b> may (i) impose a city or county tax . . . on the probate of a will . . . .”	The article’s reference to “city or county,” but omission of any reference to “town,” indicates that only counties and cities may impose probate taxes.
Consumer Utility/ Ch.38 Art.4	§ 58.1-3814(C)	<b>"Any county tax imposed hereunder shall not apply within the limits of any incorporated town located within such county</b> which town imposes a town tax on consumers of utility service or services provided by any corporation," provided that the town either provides fire/police protection and water/sewer services, or constitutes a special school district	This provision explicitly prohibits tax layering. When a town imposes consumer taxes upon utilities provided by a municipal company, the county in which the town is located may not impose consumer utility taxes within the town's boundaries.
Admissions/ Ch.38 Art.5	§ 58.1-3818	The article identifies specific counties ("Fairfax, Arlington [etc.] . . . <b>Counties</b> ") that may "levy a tax on admissions charged for attendance at an event."	This article's identification of counties by name--Fairfax, Arlington, etc.--suggests that only those specifically named counties are allowed to impose admission taxes. Thus, towns may not impose admission taxes on top of county taxes.
Transient Occupancy/ Ch.38 Art.6	§ 58.1-3819(A)	"Any <b>county</b> , by duly adopted ordinance, may levy a transient occupancy tax . . . ."	The article’s reference to “county,” but omission of any reference to towns or cities, indicates that only counties may impose transient occupancy taxes.
	§ 58.1-3819(C)	"Nothing herein contained shall affect any authority heretofore granted to any county, city or town to levy such a transient occupancy tax. <b>The county tax limitations imposed pursuant to § 58.1-3711 shall</b>	This provision gives towns which had transient occupancy taxes in place prior to the enactment of § 58.1-3819(A) (which gives only counties the authority to tax transient occupancy) authority to

Subject/ Section	Provision	Language	Explanation
		<p><b>apply to any tax levied under this section</b> mutatis mutandis."</p>	<p>continue imposing their taxes. Applying § 58.1-3711 to this provision means that counties may not levy a transient occupancy tax in towns that have such prior taxes without the town's consent (1986 Va. AG LEXIS 230).</p>
<p>Cigarette/ Ch.38 Art.7</p>	<p>§ 58.1-3830(B)</p>	<p><b>“Any county cigarette tax imposed shall not apply within the limits of any town located in such county</b> where such town now, or hereafter, imposes a town cigarette tax. However, if the governing body of any such town shall provide that a county cigarette tax, as well as the town cigarette tax, shall apply within the limits of such town, then such cigarette tax may be imposed by the county within such town.”</p>	<p>The first sentence of the provision sets forth the general rule: county cigarette taxes may not be layered on top of town cigarette taxes. But the second sentence gives towns the authority to permit tax layering if they so choose.</p>
<p>Food and Beverage/ Ch.38 Art. 7.1</p>	<p>§ 58.1-3833(A)</p>	<p>"Any <b>county</b> is hereby authorized to levy a tax on food and beverages sold . . . ."</p>	<p>The article’s reference to “county,” but omission of any reference to towns or cities, indicates that only counties may impose food and beverage taxes.</p>
	<p>§ 58.1-3833(C)</p>	<p>"Nothing herein contained shall affect any authority heretofore granted to any county, city or town to levy a meals tax. <b>The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under this section</b>, mutatis mutandis."</p>	<p>This provision gives towns which had food and beverage taxes in place prior to the enactment of § 58.1-3833(A) (which gives only counties the authority to tax food and beverages) authority to continue imposing their taxes. Applying § 58.1-3711 to this provision means that counties may not levy a food/beverage tax in towns that have such prior taxes without the town's consent (see 1986 Va. AG LEXIS 230, applying § 58.1-3711 to the transient occupancy tax to find a similar result).</p>