

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date: July 18, 2022

Action Required: Adopt Resolution

Presenter: Todd Divers

Staff Contacts: Todd Divers, Commissioner of the Revenue
Lisa Robertson, City Attorney
Jason Vandever, Treasurer

Title: Establishing a pool of funds in the amount of \$50,000, to be used for payment of refunds to licensed City businesses engaged in the same business activity as that considered by the Virginia Supreme Court on June 9, 2022 in Record Number 210414 (2nd reading)

Background

The Supreme Court of Virginia recently determined that the City's Business License Ordinance Classification of "any other repair, personal or business service not specifically included in any other subclassification under this section" does not apply to a particular activity engaged in by a specific business entity conducting business in the City. Further, the Supreme Court ruled that the City's Business License Ordinance does not contain a suitable alternative license category for that specific business activity. Therefore, the Court ruled that the City had erroneously assessed and collected license tax from this business. The City is therefore required to refund this entity for taxes paid in error for tax years 2015 through 2018. The amount of the refund totals \$3,304.21, including interest.

In addition to the refund for the above-referenced entity, we expect that a number of other entities engaged in the same business activity will come forward requesting refunds. The Commissioner of the Revenue has tried to identify any other similarly licensed entities engaged in the same activity in anticipation of refund requests from those entities. He has identified roughly twenty-five businesses that may be engaged in a similar business activity. Since the license classification in question is a catch-all provision, it is sometimes difficult to tell with precision the exact nature of a business's activities. Further inquiries would be made upon any application for correction to determine whether the Court's ruling applies to the entity in question. The Commissioner anticipates refund requests from all affected business entities totaling

less than \$50,000, including interest. Some refunds will be greater than \$2,500.

The City is required to refund business license taxes paid in error with interest per Code of Virginia 58.1-3703.1 (A) (2) (e). In addition, Code of Virginia 58.1-3703.1(A)(2)(e) states: "Interest shall be paid on the refund of any BPOL tax 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."

Discussion

City Code requires Council approval for any tax refunds resulting from an erroneous assessment in excess of \$2,500 (City Code Sec. 30-6b). Payment of interest at the same rate charged by the City is also required in accordance with Section 14-12(g) of the Charlottesville City Code and §58.1-3703.1(A)(2)(e) of the Code of Virginia.

Per City Code Sec. 30-6(b), the Commissioner of the Revenue has provided to the City Attorney information necessary to enable her to consent to the determination of the Commissioner of the Revenue that the taxes paid by certain entities subject to the Court's ruling were erroneous and should therefore be refunded. He has also provided her with information about the above-mentioned entities who may subsequently come forward requesting a refund, and whose eligibility for such refund will be made on a case by case basis.

The total for all refunds, including interest, is expected to be less than \$50,000. Should more qualifying entities come forward such that the total refunded amount exceeds, \$50,000, a separate request will be made for Council approval.

Alignment with City Council's Vision and Strategic Plan

N/A

Community Engagement

N/A

Budgetary Impact

The total of all refunds will reduce current year Business License Tax revenue (GL 410150) by no more than \$50,000. If revenues in GL 410150 are not sufficient to cover such refunds, funds shall be drawn from the Citywide reserve (GL 1631001000).

Recommendation

Approve refund of \$3,304.21 for the entity that was the subject of litigation, and approve further refunds determined by the Commissioner of Revenue to be required by Virginia Code by the totaling no more than \$46,695.79 (for a total of \$50,000) for similar

entities that are determined to be eligible on a case by case basis by the Commissioner of Revenue, acting pursuant to Virginia Code §58.1-3980, with the concurrence of the City Attorney that such entities are engaged in the same activity as the business who prevailed in the Supreme Court case.

Suggested Motion: “I move the RESOLUTION establishing a pool of funds in the amount of \$50,000, to be used for payment of refunds to licensed City engaged in the same business activity as that considered by the Virginia Supreme Court on June 9, 2022 in Record Number 210414.”

Alternatives

None

Attachments

1. Resolution_Tax Refund BPOL \$50,000 fund