

4049
199 VA. 363

Record No. 4682

In the
Supreme Court of Appeals of Virginia
at Richmond

W. W. FLOYD, T/A., ETC.

v.

**GEORGE D. FISCHER, COMMISSION, ETC.,
ET AL.**

FROM THE CIRCUIT COURT OF ARLINGTON COUNTY

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

H. G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

199 VA 363

NOTICE TO COUNSEL

This case probably will be called at the session of court to
be held **APR - - 1957**

You will be advised later more definitely as to the date.

Print names of counsel on front cover of briefs.

H. G. Turner, Clerk.

RULE 5:12—BRIEFS

\$1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

\$2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

\$3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

\$4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of said fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

\$5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

\$6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

\$7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

IN THE
Supreme Court of Appeals of Virginia
AT RICHMOND.

Record No. 4682

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 28th day of November, 1956.

W. W. FLOYD, T/A, ETC., Plaintiff in error;
against

GEORGE D. FISCHER, COMMISSIONER, ETC., ET AL.,
Defendants in error.

From the Circuit Court of Arlington County

Upon the petition of W. W. Floyd, trading as Airport Gulf Service, a writ of error is awarded him to a judgment rendered by the Circuit Court of Arlington County on the 31st day of May, 1956, in a certain proceeding then therein depending wherein the said petitioner was plaintiff and George D. Fischer, Commissioner of Revenue of Arlington County and others were defendants; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said Circuit Court in the penalty of five hundred dollars, with condition as the law directs.

RECORD

* * * * *

Filed in the Clerk's Office the 21st day of March, 1956.

Teste:

H. BRUCE GREEN, Clerk
VIRGINIA LONG, D. C.

**PETITION FOR RELIEF FROM ERRONEOUS TAX
ASSESSMENT AND FOR DECLARATORY
JUDGMENT.**

1. Plaintiff has operated since April 19, 1955, within the confines of the Washington National Airport reservation an establishment for the sale of gasoline, motor oil, vehicle lubricants and miscellaneous vehicle accessories under the trade name of Airport Gulf Service.

2. Plaintiff was requested by the office of the Commissioner of Revenue, Arlington County, Virginia, to make application for and purchase the following licenses:

A. Arlington County, Virginia, Business Privilege license for operation of business of retail merchant under Section 67 (Retail Merchant) Arlington County Business Privilege Tax Ordinance, and

page 2 } B. Virginia State Retail Merchants license as specified in Title 58, Chapter 7, Articles 6, 7 and 8, Code of Virginia (1950), as amended.

3. Plaintiff filed applications for the above licenses under protest and without waiving any defenses as to the validity thereof; that he has been assessed a tax and penalty of \$297.00 on said County license and a tax, fee and penalty of \$348.35 on said State license; plaintiff was advised by appropriate authorities that unless he filed applications for the above licenses he would be subject to prosecution, and plaintiff has been advised further that unless he pays said sums he will

be subject to all available remedies for collection of same. Copies of applications for said Arlington County and Virginia State licenses are attached hereto as Exhibits A and B, respectively, and made a part hereof by reference.

4. The State of Virginia levies and collects a tax of six cents (6c) per gallon on all gasoline sold by plaintiff at said premises. Section 107 of United States Public Law 208, 79th Congress, approved October 31, 1945, which has been incorporated and passed by the Virginia legislature in Section 7-9, Code of Virginia (1950), as amended, provides:

“§ 7-9. Boundary line between Virginia and District of Columbia.—Whereas there has been passed by the Congress of the United States Public Law two hundred eight-Seventy-ninth Congress, approved October thirty-first, nineteen hundred forty-five, entitled ‘An act to establish a boundary line between the District of Columbia and the Commonwealth of Virginia, and for other purposes,’ Title I of the act being as follows:

* * * * *

“Section 107. The State of Virginia hereby consents that exclusive jurisdiction in the Washington National Airport (as described in section one (b) of the act of June twenty-ninth, nineteen hundred forty (fifty-four Stat. six hundred eighty-six), title to which is now in the United States, shall be in the United States. The conditions upon which this consent is given are the following and none other (one) There is hereby reserved in the Commonwealth of Virginia the jurisdiction and power to levy a tax on the sale of oil, gasoline, and all other motor fuels and lubricants sold on the Washington National Airport for use in over-the-road vehicles
page 3 } such as trucks, busses, and automobiles, except sales to the United States: Provided, that the Commonwealth of Virginia shall have no jurisdiction or power to levy a tax on the sale or use of oil, gasoline, or other motor fuels and lubricants for other purposes; (two) there is hereby expressly reserved in the Commonwealth of Virginia the jurisdiction and power to serve criminal and civil process on the Washington National Airport; and (three) there is hereby reserved in the Commonwealth of Virginia the jurisdiction and power to regulate the manufacture, sale, and use of alcoholic beverages on the Washington National Airport (as de-

scribed in section one (b) of the act of June twenty-ninth, nineteen hundred forty (fifty-four Stat. six hundred eighty-six).

Subject to the limitation on the consent of the State of Virginia as expressed herein exclusive jurisdiction in the Washington National Airport shall be in the United States and the same is hereby accepted by the United States.

"This act shall have no retroactive effect except that taxes and contributions in connection with operations, sales and property on and income derived at the Washington National Airport heretofore paid either to the Commonwealth of Virginia or the District of Columbia are hereby declared to have been paid to the proper jurisdictions and the Commonwealth of Virginia and the District of Columbia each hereby waives any claim for any such taxes or contributions heretofore assessed or assessable to the extent of any such payments to either jurisdiction.

"Any provision of law of the United States or the Commonwealth of Virginia which is to any extent in conflict with this act is to the extent of such conflict hereby expressly repealed."

* * * * *

5. Plaintiff alleges that subsection 1 of said Section 107, Public Law 208, 79th Congress, grants unto the State of Virginia and the Counties of said State jurisdiction and power to levy a tax on the sale of gasoline, oil and all other motor fuels and lubricants sold on said reservation for use in over-the-road vehicles, except sales to the United States, only, which is being exercised in said tax of six cents (6c) per gallon already assessed and being paid, and any requirement that plaintiff buy State and County business licenses, and particularly, but not limited to, business licenses for which

costs are calculated by volume of sales, is in con-
page 4 } flict with the express provisions of United States

Public Law 208, 79th Congress, as appearing in Section 7-9, Code of Virginia (1950), as amended, is expressly repealed as provided in said section of the Virginia Code, and the defendants are acting improperly in the act of authorizing, assessing and attempting to collect said sums.

WHEREFORE, plaintiff asks:

A. That the Court declare Section 67, Arlington County Business Privilege Tax Ordinance and Title 58, Chapter 7, Articles 6, 7 and 8, Code of Virginia (1950), as amended, null, void, repealed and ineffective with regard to the operation of plaintiff's business as aforesaid.

B. That the defendants in their official capacities be enjoined from authorizing, assessing and requiring the purchase of, or otherwise enforcing said County ordinance and provisions of the Virginia Code with respect to the defendant's said business.

C. That he may have such other, further and general relief as may be proper.

W. W. FLOYD.

BEAN AND SIZEMORE

By L. LEE BEAN

2049-15th St., N.

Arlington 1, Virginia

Counsel for Plaintiff.

State of Virginia,

County of Arlington, to-wit:

I, Harry D. Sizemore, a notary public of and for said County, whose commission expires July 8, 1956, certify that W. W. Floyd appeared before me in my County and acknowledged that the foregoing signature is his voluntary act and deed and that the foregoing matter is true to the best of his knowledge, information and belief.

Given under my hand this 21 day of March, 1956.

HARRY D. SIZEMORE

(Seal)

Notary Public.

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EXHIBIT A.

CR-L3

REV. 1-1-51

Licensee's Copy (Not Valid Unless Countersigned)

Supreme Court of Appeals of Virginia

APPLICATION FOR COUNTY BUSINESS PRIVILEGE
LICENSE

ARLINGTON COUNTY, VIRGINIA

Commissioner of the Revenue

Court House

Arlington 1, Virginia

License Year

1956

Expires December 31st

IMPORTANT

Return all copies
with check payable
to treasurer of
Arlington County.Applicants name Floyd, W. W.
and 701 N. Harrison Street
Mailing Address Arlington, Virginia☒ Acc't No. 2240200

Trade Name

AIRPORT GULF SERVICE

Began Business in Arlington

Date 6/19/55

Phone Number

Check ☒ Individual —☒ Partnership——, Corporation——

Arlington County Business Address

Wash. Nat'l Airport

Gross receipts from business

or profession (no exclusions) \$

Home Address of Applicant: As above (If partnership
specify addresses in same order as above. If corporation
specify address of principal office)

State Nature of Business or Profession

Retail automotive service station

Section No. 67-Retail Merchant

Applicant who was in business throughout 1955.

	License basis	Tax	Penalty
Gross receipts through-			
out 1955 as shown by Ap-			
plicant's records			
Applicant who began after			

Jan. 1, 1955 and prior to
Jan. 1, 1956.

Gross receipts in 1955			
\$155,975.69 Probable Gross			
receipts in 1956	120,000.00	270.00	27.00
Applicant who began busi-			
ness on or after Jan. 1.			
1956.			
Probable Gross Receipts from			
time of beginning to Dec.			
31, 1956.			
Less allowable deductions			
—see reverse under “Defi-			
nitions”—(specify nature)			
409,915 gal. gas @ 6c—			
\$24,594.99—Sales of non-			
petroleum products			

Gross Receipts for Measuring tax \$18,835.92

Use this space for licenses other than those measured by gross receipts or gross expenditures. If for alcoholic beverages, specify A. B. C. Board No. Section No.

Not Valid Unless Countersigned

The above application, having been found in due form, licenses as indicated are issued to the applicant to have effect to December 21st, 1956.

Date	Commissioner of Revenue or Deputy
Date	County Treasurer or Deputy

Application made and filed under protest and without waiving any defenses to validity hereof.

Total Tax and Penalties\$297.00

W. W. FLOYD

Signature of Applicant

Subscribed and sworn to before me this 5th day of March, 1956.

Commissioner of Revenue, his deputy, Notary Public, or other Officer Administering Oath.

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EXHIBIT B.

Form 700

Department of Taxation

COMMONWEALTH OF VIRGINIA

1956—APPLICATION FOR STATE LICENSE—1956

For period beginning January 1, 1956 and ending December 31, 1956

The application must be made out in triplicate. The original must be sent to the Department of Taxation by the commissioner of the revenue. The duplicate must be delivered to the applicant. The triplicate must be filed in the office of the commissioner.

County or City in Which Application Made

Arlington

Print or Type

APPLICANT Floyd, W. W.

Print or Type

Trading as Airport Gulf Service

Definite Place or House Where Businesses, Employments
or Profession are to be Prosecuted

Wash. Nat'l, Airport.

Print or Type

P. O. ADDRESS 701 N. Harrison Street, Arl. Va.

Print or Type

Check ☒Individual—☒—; Partnership——; Corporation——

If a partnership, give name and post office address of each member. If a corporation, state whether domestic (that is, chartered under the laws of this State), or foreign (that is, chartered under the laws of another State or country), and if foreign, give date of authority to do business in Virginia issued by the State Corporation Commission _____

Date applicant began business at above place 6/19/55 No.
of present employees _____ Annual rental value of premises \$ _____

Applicant applies for following licenses: (enumerate) Retail Merchant

	Basis	Tax	Penalty	Fee
RETAIL MERCHANT				
Who was in business throughout 1955.				
Sales throughout 1955 as shown by applicant's records				\$
Who began after Jan. 1, 1955 and prior to Jan. 1, 1956				
Probable sales in 1956	150,000,00			
Sales in 1955	\$153,975.68			
Who began business on or after Jan. 1, 1956.				
Probable sales from time of beginning to Dec. 31, 1956				
Less allowable deductions—(specify nature)				
409,915 gal. gas @ 6c—				
\$24,594.99—sales of non-petroleum products \$18,-				
835.96				

SALES FOR MEASURING TAX

\$ 316.06 \$ 31.60 .75

WHOLESALE MERCHANT

Who was in business throughout 1955. Purchases throughout 1955 as shown by applicant's records \$

Merchandise manufactured by applicant and sold or offered for sale in 1955 at place of business which was not place of manufacture, as shown by applicant's records ..

Who began after Jan. 1, 1955 and prior to Jan. 1, 1956.

Purchases in 1955, in-

cluding goods manu-
factured by applicant
and received for sale
at place of business
which was not place
of manufacture \$—

Probable purchases in
1956

Probable amount of
merchandise manu-
factured by applicant
which will be received
in 1956 to be offered
for sale at place of
business which is not
place of manufacture

Who began business on or
after January 1, 1956.

Purchases with which
to begin business ..

Probable purchases from
beginning to Dec. 31,
1956

Merchandise manufac-
tured by applicant
received and to be of-
fered for sale at place
which is not place of
manufacture

Probable amount of mer-
chandise manufac-
tured by applicant to
be received between
this date and Dec. 31,
1956, to be offered for
sale at place which is
not place of manu-
facture

TOTAL

Less allowable deduc-
tions — (specify na-
ture)

PURCHASES FOR
MEASURING TAX .

TOTALS

\$ 316.06 \$ 31.60 .75

TAXES PRESCRIBED BY LAW	Three hundred,	
sixteen	DOLLARS 00 CENT	\$ 316.00
	PENALTIES	31.60
TOTAL TAXES AND PENALTIES		347.60
FEES (WHICH ARE ALSO PAYABLE INTO		
STATE TREASURY)		.75
TOTAL TAXES, PENALTIES AND FEES		\$ 348.35

If Applicant Operated in Past 12 Months under
Transferred License, Give Name of Transferrer
Gulf. Oil Company

OATH.—I, the undersigned applicant, do swear (or affirm)
that the foregoing figures and statements are true, full and
correct to the best of my knowledge and belief.

Sworn (or affirmed) to before me this 5th day of March 1956.

Application made and filed under protest and without waiv-
ing any defenses to validity hereof

W. W. FLOYD

Signature of Applicant for License

This name must be the same as that given at the top of this
application. If the application is signed by an authorized
agent of the applicant, insert signature below:

By

Authorized Agent

Signature of commissioner of the revenue, his deputy or a
notary public or other officer administering oath.

LICENSE

I, Floyd, W. W. the commissioner of the revenue, do find the
foregoing application in due form:

Therefore, Licenses are this day severally granted the ap-
plicant named in the application Wash. Nat'l Airport to prose-
cute the businesses, employments, or professions covered by
the application as indicated by the extension of the taxes
thereon, and their payment as indicated hereon, at the definite
house or place in my County (City) described in the applica-
tion, for the period beginning January 1, 1956, and expiring
December 31, 1956, or if quarterly, expiring, 1956.

This license shall not be valid or have any legal effect un-

less and until the taxes prescribed by law (and penalties and fees), as shown on the foregoing application and hereon, be paid to the treasurer of my county (city), and the fact of such payment appear on the face hereof by the signature of such treasurer hereto.

Date Signed: _____

Commissioner of the Revenue

Date Signed: _____

County (City) Treasurer

TAXES PRESCRIBED	\$ 316.00
PENALTIES	31.60
TOTAL TAXES AND PENALTIES	347.60
FEES	.75
TOTAL TAXES, PENALTIES & FEES	348.35

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* * * * *

Filed Mar. 22, 1956.

H. BRUCE GREEN, Clerk,
Circuit Court, Arlington County, Va.
By V. L., Deputy Clerk.

PETITION FOR RELIEF FROM ERRONEOUS TAX
ASSESSMENT AND FOR DECLARATORY
JUDGMENT.

1. Plaintiff has operated since April 19, 1955, within the confines of the Washington National Airport reservation an establishment for the sale of gasoline, motor oil, vehicle lubricants and miscellaneous vehicle accessories under the trade name of Airport Gulf Service.

2. Plaintiff was requested by the office of the Commissioner of Revenue, Arlington County, Virginia, to make application for and purchase the following licenses:

A. Arlington County, Virginia Business Privilege license for operation of business of retail merchant under Section 67

(Retail Merchant) Arlington County Business Privilege Tax Ordinance, and
page 8 } B. Virginia State Retail Merchants license as specified in Title 58, Chapter 7, Articles 6, 7 and 8, Code of Virginia (1950), as amended.

3. Plaintiff filed applications for the above licenses under protest and without waiving any defenses as to the validity thereof; that he has been assessed a tax and penalty of \$297.00 on said County license and a tax, fee and penalty of \$348.35 on said State license; plaintiff was advised by appropriate authorities that unless he filed applications for the above licenses he would be subject to prosecution, and plaintiff has been advised further that unless he pays said sums he will be subject to all available remedies for collection of same. Copies of applications for said Arlington County and Virginia State licenses are attached hereto as Exhibits A and B, respectively, and made a part hereof by reference.

4. The State of Virginia levies and collects a tax of six cents (6c) per gallon on all gasoline sold by plaintiff at said premises. Section 107 of United States Public Law 208, 79th Congress, approved October 31, 1945, which has been incorporated and passed by the Virginia legislature in Section 7-9, Code of Virginia (1950), as amended, provides:

“§7-9. Boundary line between Virginia and District of Columbia.—Whereas there has been passed by the Congress of the United States Public Law two hundred eight-Seventy-ninth Congress, approved October thirty-first, nineteen hundred forty-five, entitled ‘An act to establish a boundary line between the District of Columbia, and the Commonwealth of Virginia, and for other purposes’, Title I of the act being as follows:

* * * * *

Section 107. The State of Virginia hereby consents that exclusive jurisdiction in the Washington National Airport (as described in section one (b) of the act of June twenty-ninth, nineteen hundred forty (fifty-four Stat. six hundred eighty-six), title to which is now in the United States, shall be in the United States. The conditions upon which this consent is given are the following and none other: (one) There is hereby reserved in the Commonwealth of Virginia the jurisdiction and power to levy a tax on the sale of oil, gasoline,

and all other motor fuels and lubricants sold on page 8 } the Washington National Airport for use in over-the-road vehicles such as trucks, busses, and automobiles, except sales to the United States: Provided, that the Commonwealth of Virginia shall have no jurisdiction or power to levy a tax on the sale or use of oil, gasoline, or other motor fuels and lubricants for other purposes; (two) there is hereby expressly reserved in the Commonwealth of Virginia the jurisdiction and power to serve criminal and civil process on the Washington National Airport; and (three) there is hereby reserved in the Commonwealth of Virginia the jurisdiction and power to regulate the manufacture, sale, and use of alcoholic beverages on the Washington National Airport (as described in section one (b) of the act of June twenty-ninth, nineteen hundred forty (fifty-four Stat. six hundred eighty-six).

Subject to the limitation on the consent of the State of Virginia as expressed herein exclusive jurisdiction in the Washington National Airport shall be in the United States and the same is hereby accepted by the United States.

This act shall have no retroactive effect except that taxes and contributions in connection with operations, sales and property on and income derived at the Washington National Airport heretofore paid either to the Commonwealth of Virginia or the District of Columbia are hereby declared to have been paid the proper jurisdictions and the Commonwealth of Virginia and the District of Columbia each hereby waives any claim for any such taxes or contributions heretofore assessed or assessable to the extent of any such payments to either jurisdiction.

Any provision of law of the United States or the Commonwealth of Virginia which is to any extent in conflict with this act is to the extent of such conflict hereby expressly repealed."

* * * * *

5. Plaintiff alleges that subsection I of said Section 107, Public Law 208, 79th Congress, grants unto the State of Virginia and the Counties of said State jurisdiction and power to levy a tax on the sale of gasoline, oil and all other motor fuels and lubricants sold on said reservation for use in over-the-road vehicles, except sales to the United States, only, which is being exercised in said tax of six cents (6c) per gallon already assessed and being paid, and any requirement that plaintiff buy State and County business licenses, and par-

ticularly, but not limited to, business licenses for page 10 } which costs are calculated by volume of sales, is in conflict with the express provisions of United States Public Law 208, 79th Congress, as appearing in Section 7-9, Code of Virginia (1950), as amended, is expressly repealed as provided in said section of the Virginia Code, and the defendants are acting improperly in the act of authorizing, assessing and attempting to collect said sums.

WHEREFORE, plaintiff asks:

A. That the Court declare Section 67, Arlington County Business Privilege Tax Ordinance and Title 58, Chapter 7, Articles 6, 7 and 8, Code of Virginia (1950), as amended, null, void, repealed and ineffective with regard to the operation of plaintiffs business as aforesaid.

B. That the defendants in their official capacities be enjoined from authorizing, assessing and requiring the purchase of, or otherwise enforcing said County ordinance and provisions of the Virginia Code with respect to the defendant's said business.

C. That he may have such other, further and general relief as may be proper.

/s/ W. W. Floyd.

BEAN AND SIZEMORE

By: /s/ L. LEE BEAN,
2049-15th St., N.,
Arlington 1, Virginia,
Counsel for Plaintiff.

STATE OF VIRGINIA,
COUNTY OF ARLINGTON, to-wit:

I, Harry D. Sizemore, a notary public of and for said County, whose commission expires July 8, 1956, certify that W. W. Floyd appeared before me in my County and acknowledged that the foregoing signature in his voluntary act and deed and that the foregoing matter is true to the best of his knowledge, information and belief.

Given under my hand this 21 day of March, 1956.

/s/ HARRY D. SIZEMORE,
Notary Public.

page 11 } Service of a copy of the foregoing pleading is
hereby accepted.

3/21/56 GEORGE D. FISCHER,
Commissioner of Revenue,
Arlington County, Virginia.

3/22/56 COLIN C. MACPHERSON,
Treasurer, Arlington
County, Virginia.

3/21/56 JEANE D. SIMMONDS,
Clerk of the County Board,
Arlington County, Virginia.

3/21/56 WILLIAM J. HASSAN,
Commonwealth's Attorney,
Arlington County, Virginia.

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* * * * *

Filed Apr. 9, 1956.

H. BRUCE GREEN, Clerk,
Circuit Court, Arlington County, Va.
By V. LONG, Deputy Clerk.

DEMURRER.

COMES NOW the defendants, George D. Fischer, Commissioner of Revenue, Colin C. MacPherson, Treasurer and The County Board of Arlington County, Virginia, by counsel, and file this demurrer to the petition for relief from erroneous tax assessment and for declaratory judgment heretofore filed, and say that the complaint is insufficient in law.

• GROUND FOR DEMURRER.

(1) Section 7-9, Code of Virginia (1950). as amended.
"Section 107 * * * There is hereby reserved in the Commonwealth of Virginia, the jurisdiction and power to levy a tax on the sale of oil, gasoline and all other motor fuels and

lubricants sold on the Washington National Airport for use in over-the-road vehicles such as trucks, busses, and automobiles, except sales to the United States: * * *"

GEORGE D. FISCHER, Commissioner
of Revenue.

COLIN C. MacPHERSON, Treasurer
THE COUNTY BOARD OF ARLING-
TON COUNTY, VIRGINIA

By WILLIAM J. HASSAN,
Counsel.

WILLIAM J. HASSAN,
Attorney for the Commonwealth.

I hereby certify that I have this 9th day of April, 1956, mailed a true copy of the foregoing demurrer to Bean and Sizemore, Attorneys for Plaintiff, 2049-15th St. North, Arlington, Va.

WILLIAM J. HASSAN.

* * * * *

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* * * * *

ORDER.

This matter came on to be heard the 21st day of May, 1956, upon the plaintiff's Petition for Relief from Erroneous Tax Assessment and For Declaratory Judgment; upon the Demurrer filed in behalf of the defendants, with grounds set forth therein; upon argument on the Demurrer by counsel for plaintiff and defendants, and

UPON CONSIDERATION WHEREOF the Court being of the opinion that plaintiff's said Petition is not sufficient in law; that the Petition fails to state a cause of action for which relief may be granted; that the Demurrer should be sustained and the plaintiff thereupon electing not to amend his Petition and to stand on the ruling on the Demurrer, it is this 31st day of May, 1956.

ADJUDGED, ORDERED AND DECREED that the defendants' Demurrer be, and the same hereby is, sustained, and the Petition for Relief from Erroneous Tax Assessment and

For Declaratory Judgment is dismissed without
 page 15 } leave to the plaintiff to file amended pleadings
 herein, to which rulings of the Court the plaintiff,
 by counsel, excepts.

This order is final.

EMERY N. HOSMER,
 Judge.

* * * * *

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* * * * *

Filed Jul. 5, 1956.

H. BRUCE GREEN, Clerk,
 Circuit Court, Arlington County, Va.
 By V. L., Deputy Clerk.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To H. Bruce Green, Clerk, Circuit Court of Arlington County, Virginia.

Counsel for W. W. Floyd, T/A Airport Gulf Service, plaintiff in the above styled action in the Circuit Court of Arlington County, Virginia, hereby gives notice of appeal from an order entered in this action on the 31st day of May, 1956, sustaining defendants' Demurrer to plaintiff's Petition for Relief from Erroneous Tax Assessment and for Declaratory Judgment, in response to which plaintiff elected not to amend his said Petition and to stand on the ruling on the Demurrer, resulting in said Petition for Relief from Erroneous Tax Assessment and for Declaratory Judgment being dismissed, and sets forth the following assignments of error:

1. The judgment of the Court is contrary to law.

2. The Court erred in sustaining defendants' page 17 } Demurrer to plaintiff's Petition for Relief from Erroneous Tax Assessment and for Declaratory Judgment.

BEAN AND SIZEMORE
By: HARRY D. SIZEMORE,
2049-15th Street, N.,
Arlington, Virginia,
Counsel for Appellant.

I certify that I delivered a copy hereof, the 5th day of July, 1956, to William J. Hassan, Court House, Arlington, Virginia, Counsel for Defendants.

HARRY D. SIZEMORE.

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STATEMENT OF FACTS AND OTHER INCIDENTS OF CASE.

Counsel for Plaintiff and Defendants hereby agree and stipulate that the pleadings filed in this action, to-wit, the Petition for Relief from Erroneous Tax Assessment and For Declaratory Judgment, with attached exhibits; the Demurrer and the Order entered May 31, 1956 sustaining said Demurrer, wherein Plaintiff elected not to amend his said Petition and to stand on the ruling on the Demurrer constitute the sole and complete facts and incidents pertaining to this case and counsel for all parties adopt the aforesaid pleadings and Order and the allegations and contents thereof as an accurate and complete statement of facts and other incidents of this case.

Respectfully submitted,

BEAN AND SIZEMORE.
By: HARRY D. SIZEMORE,
2049-15th Street, North,
Arlington, Virginia,
Counsel for Plaintiff.

Received by me this 16th day of July, 1956.

H. BRUCE GREEN, Clerk.

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WILLIAM J. HASSAN,
Court House,
Arlington, Virginia,
Counsel for Defendants.

We, the undersigned counsel of record, for plaintiff and defendants respectively, do certify that we were present when the matter of W. W. Floyd, t/a Airport Gulf Service v. George D. Fischer, Commissioner of Revenue, Colin C. McPherson, Treasurer and The County Board of Arlington County, Virginia, a body corporate, At Law No. 5713, was heard by the Circuit Court of Arlington County, Virginia; that we are duly qualified to practice before the Supreme Court of Appeals of Virginia, and the foregoing and annexed Statement of Facts and Other Incidents of Case is a true and accurate statement of the matters discussed therein.

BEAN AND SIZEMORE.
By: HARRY D. SIZEMORE,
Counsel for Plaintiff.
WILLIAM J. HASSAN,
Counsel for Defendants.

page 23 } The foregoing and annexed Statement of Facts
and Other Incidents of Case was tendered to the
Court by counsel for all parties on July 16th, 1956.

EMERY N. HOSMER, Judge.

I, Emery N. Hosmer, Judge of the Circuit Court of Arlington County, Virginia, do certify that the foregoing and annexed statement is an authentic statement of facts and other incidents presented before said Court in action At Law No. 5713, styled W. W. Floyd, t/a Airport Gulf Service v. George D. Fischer, Commissioner of Revenue, Colin C. McPherson, Treasurer, and the County Board of Arlington County, Virginia, a body corporate.

Entered this 16th day of July, 1956.

EMERY N. HOSMER, Judge.

page 24 } CERTIFICATE OF CLERK.

I, H. Bruce Green, Clerk of the Circuit Court of Arlington County, Virginia, the same being a Court of Record, do hereby certify that the within Statement of Facts and Other Incidents of Case in the case of W. W. Floyd, t/a Airport Gulf Service v. George D. Fisher, et al is the original Statement of Facts and Other Incidents of Case received by me.

Given under my hand this 27th day of August, 1956.

H. BRUCE GREEN, Clerk,
Circuit Court of Arlington County,
Virginia.

A Copy—Teste:

H. G. TURNER, Clerk.

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