

**DEPARTMENT OF TAXATION
2002 Fiscal Impact Statement**

1. Patron: Drake

3. Committee: House Finance

4. Title: Business, Professional and Occupational License
Tax; Real Estate Brokers

2. Bill Number: HB 503

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would provide an exclusion from the local Business, Professional and Occupational License (BPOL) tax to real estate brokers for desk fees and other overhead costs paid to the brokers by real estate agents. Under current law, brokers are not entitled to exclude these amounts from gross receipts.

This bill would also provide that brokers are not entitled to exclude commissions paid over to agents unless the agents actually pay a license tax based on the commissions. Under current law, brokers are entitled to exclude commissions paid over to agents so long as the agents are subject to a BPOL tax on the commissions.

The effective date of this bill is not specified.

6. Fiscal Impact Estimates are: Not Available (See line 8).

7. Budget amendment necessary: No.

8. Fiscal implications:

This bill would have no impact on state revenues. This bill would result in an increase in local revenues to the extent that it precludes brokers from excluding commissions paid to agents unless the agents actually pay a BPOL tax on the commissions. This bill will result in a decrease in local BPOL tax revenues in any locality that requires brokers to include desk fees and other overhead costs in their taxable gross receipts. The department is aware of only one locality that requires brokers to include desk fees and other overhead costs in their taxable gross receipts. The net impact to local revenues is unknown.

9. Specific agency or political subdivisions affected:

All localities that impose the BPOL tax.

10. Technical amendment necessary:

If the intent of this bill is to provide an exclusion from the local BPOL tax to real estate brokers for desk fees and other overhead costs paid to the brokers by real estate agents, the following technical amendment is suggested:

Page 1, Line 21, After the first appearance of broker
Delete: remainder of sentence

11. Other comments:

The BPOL tax is a tax on businesses for the privilege of engaging in business at a definite place of business within a Virginia locality. The measure or basis of the BPOL tax generally is the gross receipts of the business.

Traditionally, real estate brokers have compensated real estate agents by paying over a portion of the sales commission to their agents. Recently, many brokers have become “100 percent commission brokers.” These brokers, who are compensated by charging desk fees and other overhead costs to the agents, pay over all commissions to their agents.

Under current law, all brokers, whether operating as traditional brokers or 100 percent brokers, are entitled to exclude commissions paid over to agents so long as the agents are subject to a BPOL tax on the commissions. This bill would modify this exclusion so that brokers are not entitled to exclude commissions paid over to agents unless the agents actually pay a license tax based on the commissions.

In practice, because some localities do not impose a BPOL tax on agents, this exclusion is not available to all brokers. Regardless, although the BPOL tax liability of brokers and agents will vary by locality and by the commission agreement, under current law the total amount of the commission generated on a real estate sales transaction is subject to BPOL taxation only once. The total amount of the commission is either included in the gross receipts of the broker or the agent, or it is apportioned between them.

Additionally, the taxable gross receipts of brokers with respect to real estate sales transactions have traditionally been limited to commission income. Recently, TAX issued a ruling upholding an assessment made to a 100% broker by a Commissioner of the Revenue that departs from the traditional tax treatment of brokers. Because the locality does not impose a BPOL tax on agents, the broker was subject to the BPOL tax based on the total amount of the commissions that were received by the office and paid over to agents. The locality assessed additional BPOL taxes based on the desk fees and other overhead costs received by the broker from its agents. TAX’s opinion upheld the assessment, because the current state BPOL law does not provide a specific exclusion for these amounts. However, the assessment resulted in the 100 percent

commission broker paying substantially higher BPOL taxes than competing traditional brokers.

This bill would provide that the taxable measure for all brokers with respect to real estate sales transactions is commission income. This bill would not alter the BPOL taxation of real estate agents.

c: Secretary of Finance

Date: 1/23/02/JEM

Document: S:\2002leg\WorkInProgress\OTPwork\House Bills\HB0503F161.doc