

DEPARTMENT OF TAXATION

2002 Fiscal Impact Statement

1. **Patron:** Drake

2. **Bill Number:** HB 503

3. **Committee:** Senate Finance

House of Origin:

 Introduced

 Substitute

 Engrossed

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

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would provide an exclusion from the local Business, Professional and Occupational License (BPOL) tax to certain 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.

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 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.

9. **Specific agency or political subdivisions affected:**

All localities that impose the BPOL tax.

10. **Technical amendment necessary:** None.

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 commission brokers, are entitled to exclude commissions paid over to agents so long as the agents are subject to a BPOL tax 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 percent commission 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 any broker who pays over the full commission to an agent less an adjustment for the business license tax paid by the broker on such commission may deduct from its gross receipts any desk fee and other overhead costs paid by the agent.

Additionally, this bill would provide that any agent who obtains a business license must identify on its license application the broker to whom such excluded receipts have been paid, and the amount of such receipts that were included in the broker's license application.

c: Secretary of Finance

Date: 2/13/02/JEM

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