

DEPARTMENT OF TAXATION

2010 Fiscal Impact Statement

1. **Patron** Thomas D. Gear

2. **Bill Number** HB 1347

3. **Committee** Senate Finance

House of Origin:

 Introduced

 Substitute

 Engrossed

4. **Title** Retail Sales and Use Tax and Business,
Professional, and Occupational License Tax
Exemptions; Aviation Companies

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would provide a Retail Sales and Use Tax exemption for personal property purchased or leased and used exclusively by an aviation company in its primary business that is directly related to operations under the guidance of the United States Department of Defense and other federal government enforcement agencies in active missions/sorties, with manned fixed wing aircraft. The bill would also provide an exemption from the local Business, Professional and Occupational License ("BPOL") tax for such companies.

The effective date of this bill is not specified.

6. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

7. **Budget amendment necessary:** Yes.

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8. **Fiscal implications:**

Administrative Costs

TAX considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

This bill would result in an unknown loss of both state and local revenues. There are an unknown number of businesses that may qualify for this exemption. To the extent that the Retail Sales and Use Tax is currently imposed on tangible personal property purchased or leased and used exclusively by such aviation companies, this bill would have an unknown negative impact on sales tax revenues. If multiple companies qualify for this exemption, the state and local revenue loss could be significant. To the extent that a locality currently imposes the Business, Professional and Occupational License ("BPOL") tax on such aviation companies, this bill would also have an unknown negative impact on local

revenues. In Fiscal Year 2008, the BPOL tax generated more than \$661.8 million for the counties, cities, and towns that imposed the tax. The BPOL tax is imposed in all 39 cities, 47 of the 95 counties, and many of the towns of the Commonwealth.

9. Specific agency or political subdivisions affected:

Department of Taxation
All localities

10. Technical amendment necessary: No.

11. Other comments:

Retail Sales and Use Tax

Generally, the Retail Sales and Use Tax is imposed on the sale or lease of tangible personal property at a rate of 5%. Currently, there are exemptions for tangible personal property sold or leased to an airline operating in intrastate, interstate or foreign commerce as a common carrier and for the sale, lease, use, storage, consumption, or distribution of an orbital or suborbital space facility, space propulsion system, space vehicle, satellite, or space station. There is also a Retail Sales and Use Tax exemption for industrial materials for future processing, manufacturing, refining, or conversion into articles of tangible personal property for resale. Machinery, tools and equipment used directly in processing, manufacturing, refining, mining or converting products for sale or resale are also exempt.

BPOL Tax

The Business, Professional and Occupational License (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. The BPOL tax is a tax on gross receipts, not net income. Under current BPOL law, any locality may charge a license fee in an amount not to exceed:

- \$50 for any locality with a population of 25,000 and greater
- \$30 for any locality with a population smaller than 25,000

The locality may not assess a license tax on gross receipts upon which it charges a license fee. Additionally, the locality may not impose a license tax on a business with gross receipts:

- less than \$100,000 in any locality with a population greater than 50,000
- less than \$50,000 in any locality with a population of 25,000 but no more than 50,000.

Any business with gross receipts in excess of these thresholds may be subject to license tax at a rate not to exceed the rates set forth below:

- Contracting - sixteen cents per \$100 of gross receipts
- Retail sales - twenty cents per \$100 of gross receipts

- Financial, real estate and professional services - fifty eight cents per \$100 of gross receipts
- Repair, personal and business services, and all other businesses - thirty six cents per \$100 of gross receipts.

Localities that imposed a higher rate structure on January 1, 1978 are allowed to continue to impose the tax at those rates.

Currently, no locality may impose the BPOL tax on a manufacturer for the privilege of manufacturing or selling goods, wares and merchandise at wholesale at the place of manufacture. The Va. Code does not define the term "manufacturer" for purposes of the local business license tax. However, the Supreme Court of Virginia in *County of Chesterfield v. BBC Brown Boveri*, 238 Va. 64 (1989), developed a test involving three essential elements in determining whether a manufacturing activity is being undertaken. These elements are: (1) original material, referred to as raw material; (2) a process whereby the original material is changed; and (3) a resulting product, which by reason of being subject to such processing, is different from the original material.

Proposal

This bill would provide a Retail Sales and Use Tax exemption for personal property purchased or leased and used exclusively by an aviation company in its primary business that is directly related to operations under the guidance of the United States Department of Defense and other federal government enforcement agencies in active missions/sorties with manned fixed wing aircraft. The bill would also provide an exemption from the local Business, Professional and Occupational License ("BPOL") tax for such companies.

The effective date of this bill is not specified.

Similar Legislation

House Bill 57 would prohibit any locality from imposing the BPOL tax if it did not impose the tax on January 1, 2010 and would prohibit any locality from increasing its BPOL tax rates after January 1, 2010.

House Bill 409 would require that any contractor applying for or renewing a business license in any locality must furnish either i) satisfactory proof that he is duly licensed or certified, or ii) a written statement supported by an affidavit that he is not subject to licensure or certification.

House Bill 713 would require that the Commissioner of the Revenue verify that every taxpayer seeking a local business license who is subject to the state licensing requirements of the Department of Professional and Occupational Regulation has obtained a state license.

House Bill 985 and **Senate Bill 90** would exclude amounts paid to an independent registered representative as a commission on any sale or purchase of a security from the gross receipts of a security broker or security dealer for the purposes of the BPOL tax.

House Bill 1356 would clarify that campgrounds and bed and breakfast establishments are subject to the BPOL Tax.

cc : Secretary of Finance

Date: 2/18/2010 AM
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