DEPARTMENT OF TAXATION
2010 Fiscal Impact Statement

1. **Patron** Frederick M. Quayle

2. **Bill Number** SB 90
   House of Origin:
   _____ **Introduced**
   _____ **Substitute**
   _____ **Engrossed**

   Second House:
   _____ **In Committee**
   _____ **Substitute**
   __X__ **Enrolled**

3. **Committee** Passed by House and Senate

4. **Title** Business, Professional, and Occupational License Tax; Limits on Imposition and Rates

5. **Summary/Purpose:**

   This bill 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 Business, Professional, and Occupational License ("BPOL") Tax. The security broker or dealer would have to identify on his license application each independent registered representative to whom the excluded receipts have been paid and, if applicable, the jurisdictions where the independent registered representative is subject to the BPOL Tax.

   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. To the extent that the gross receipts of security brokers and dealers are lowered by amounts paid as a commission to independent registered representatives, this bill would 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:**

   All localities

10. **Technical amendment necessary:** No.

11. Other comments:

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.

Taxability of Pass Through Costs

For purposes of the BPOL tax, *Va. Code* § 58.1-3700.1 provides that gross receipts means "the whole, entire, total receipts, without deduction." Additionally, a business that is not the legal agent of its customer may not exclude from its BPOL taxable gross receipts monies it receives from its customer as payment for costs incurred by the business with others who have no contractual relationship with the customer.

In some instances, an agency relationship meeting specific criteria enables a taxpayer to exclude certain receipts from the calculation of his gross receipts. Ruling of the Tax Commissioner, Public Document 01-38 (4/12/2001), establishes the following criteria: (1) there must be a contractual relationship between a taxpayer and both the client and the contracted third party; (2) the taxpayer cannot commingle its funds with all other sources; it must have a separate accounting system or a fiduciary account where the pass through receipts are recorded; and (3) the taxpayer does not report these "pass through costs" on its federal income tax return.

The BPOL law allows taxpayers to deduct pass through costs in very limited situations, including the exclusion of commissions paid by real estate brokers to their agents that have BPOL licenses. Under current law, without a specific exemption, such as the one for real estate brokers, taxpayers are not allowed to deduct receipts subsequently paid over to an independent representative unless the taxpayer is acting as an agent in the transactions.

Proposal

This bill 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 Business, Professional, and Occupational License ("BPOL") Tax. The security broker or dealer would have to identify on his license application each independent registered representative to whom the excluded receipts have been paid and, if applicable, the jurisdictions where the independent registered representative is subject to the BPOL Tax.

The effective date of this bill is not specified.

Similar Legislation

House Bill 985 is identical to this bill.

House Bill 409 and **House Bill 713** 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.

cc : Secretary of Finance

Date: 3/4/2010 AM
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