

DEPARTMENT OF TAXATION

2011 Fiscal Impact Statement

1. **Patron** Mark L. Cole

2. **Bill Number** HB 1437

3. **Committee** Senate Finance

House of Origin:

 Introduced

 Substitute

 Engrossed

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

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would allow localities the option to impose the Business, Professional and Occupational License ("BPOL") tax on either the gross receipts or the Virginia taxable income of a business.

Under current law, the BPOL tax is based on the gross receipts of the business.

The effective date of this bill is not specified.

6. **Budget amendment necessary:** No.

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

8. **Fiscal implications:**

This bill would have no impact on state revenues. To the extent that the gross receipts of the businesses in a locality differ from the Virginia taxable income of the businesses in the locality, the bill would have an unknown revenue impact on any locality that opts to calculate the BPOL tax on Virginia taxable income. In Fiscal Year 2009, the BPOL tax generated more than \$660.1 million for the counties, cities, and towns that imposed the tax. The BPOL tax is imposed in all 39 cities, 46 of the 95 counties, and many of the towns of the Commonwealth.

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

All localities that impose the BPOL tax.

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.

Situs Rules

Where a business has a definite place of business or office in more than one locality, for the purposes of the BPOL tax the situs of the gross receipts is generally determined as follows:

- Contracting - The definite place of business where the services are performed. If the services are not performed at any definite place of business, then the gross receipts are attributed to the definite place of business where the services are directed or controlled. However, if the amount of business that a contractor has done in a locality exceeds \$25,000 in any year, the locality may impose the BPOL tax on such amount of business even if the contractor does not have a definite place of business in the locality. That portion of the contractor's gross receipts would not be subject to the BPOL tax in any other locality.

- Retail sales - The definite place of business where the sales solicitations occurred. If the sales solicitations do not occur at any definite place of business, then the gross receipts are attributed to the definite place of business where the sales solicitations are directed or controlled.
- Rentals of tangible personal property – The definite place of business where the tangible personal property is rented. If the property is not rented from any definite place of business, then the gross receipts are attributed to the definite place of business where the rental is managed.
- Performance of services - The definite place of business where the services are performed. If the services are not performed at any definite place of business, then the gross receipts are attributed to the definite place of business where the services are directed or controlled.

If it is impractical or impossible to determine which definite place of business the gross receipts of a business should be attributed to under the general rules, then the gross receipts are apportioned between the definite places of business on the basis of payroll. In order for gross receipts to be apportioned to a definite place of business, activities applicable under the general rule must have occurred at or have been controlled from such definite place of business.

Virginia Taxable Income

An individual's Virginia taxable income is his federal adjusted gross income for the taxable year with numerous modifications unrelated to the operation of a business, including, but not limited to, i) the addition of interest or dividends on obligations of any state other than Virginia, ii) the subtraction of Social Security benefits, iii) a deduction for blind or aged taxpayers, iv) a deduction for contributing to a Virginia College Savings Plan, etc.

A corporation's Virginia taxable income is its federal taxable income for the taxable year with numerous modifications some of which are unrelated to a business, including, but not limited to, i) the addition of interest or dividends on obligations of any state other than Virginia, ii) the subtraction of dividends upon stock in any domestic international corporation, iii) the subtraction of the amount contributed in funds to the Virginia Public School Construction Grants Program and Fund, etc.

Basis of the BPOL Tax

The measure or basis of the BPOL tax is generally the gross receipts of the business. As the BPOL tax is a tax on gross receipts, not net income, the BPOL tax has been the subject of criticism for many years. Opponents of the tax point out that the gross receipts of a business have little or no relation to the profitability of the business, and that different types of businesses have different levels of profitability compared to their gross receipts.

While Virginia taxable income may resemble net income for certain businesses, the additions, subtractions, and deductions used to determine an individual's or corporation's Virginia taxable income may not be appropriate in the determination of a business' profitability or as a measure of its activities in a locality. Virginia taxable income, for both

individuals and corporations, includes income from all sources, not just from business activities, and not just from the operations of the business in a particular locality. Additionally, Virginia allows deductions from taxable income for personal items that a sole proprietor may legitimately take on his individual income tax return that have no bearing on his business activities. For example, deductions for prepaid tuition contracts, and long term care insurance. If the intent of this bill is to allow localities to use the net income of a business in a particular locality as the basis for the BPOL tax instead of gross receipts, one suggestion would be to allow a deduction from the gross receipts of a business for any item deductible under federal law as an ordinary and necessary business expense, but not to use Virginia taxable income.

Proposal

This bill would allow localities the option to impose the Business, Professional and Occupational License ("BPOL") tax on either the gross receipts or the Virginia taxable income of a business.

The effective date of this bill is not specified.

Similar Legislation

House Bill 1587 would clarify that localities by ordinance may provide an exemption, refund, rebate, or other relief from the Business, Professional, and Occupational License ("BPOL") Tax for a period not to exceed 2 years for businesses locating for the first time in a locality. The bill would also provide that a business would not be deemed to locate for the first time in a locality on the basis of merger, acquisition, similar business combination or a change in business form.

Senate Bill 1408 would exempt any business that loses money and does not have a profit for the taxable year from the Business, Professional, and Occupational License ("BPOL") Tax for taxable years beginning on or after January 1, 2012. The business would be required to offer its income tax return to the local commissioner of the revenue as proof of the losses. Eligibility would be determined annually, and it would be the obligation of the business owner to submit the applicable income tax return.

The **Introduced Executive Budget** directs the Joint Legislative Audit and Review Commission ("JLARC") to study the impact on local revenue streams of restructuring the BPOL Tax such that the basis of the tax is changed from gross receipts to net income and submit its final report by November 1, 2012.

cc : Secretary of Finance
Date: 2/7/2011 AM
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