

DEPARTMENT OF TAXATION

2012 Fiscal Impact Statement

1. **Patron** Terry G. Kilgore

2. **Bill Number** HB 1233

3. **Committee** Senate Finance

House of Origin:

 Introduced

 Substitute

 Engrossed

4. **Title** Business, Professional, and Occupational
License Tax; Uniform Ordinances

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would require counties and cities that imposed a license tax for the severance of coal, gas, or oil for the 2008, 2009, 2010, or 2011 license years to adopt the uniform ordinance provisions for the Business, Professional and Occupational License ("BPOL") tax set out in *Va. Code* § 58.1-3703.1(A) with a retroactive effective date to the 2008 license year within 90 days of the bill becoming effective. The localities would not be required to include provisions substantially similar to those set forth for license requirements and situs of gross receipts. The bill would provide that an ordinance amended in such a manner complies with the requirement of *Va. Code* § 58.1-3703.1 that any ordinance imposing a license tax include provisions substantially similar to the uniform ordinance provisions.

The bill would also provide that any person assessed with a severance tax for license years 2008 through 2013 would be allowed to file an administrative appeal to the local assessing official only during the period beginning July 1, 2013, and ending July 1, 2014. Such appeal may be further appealed to the Tax Commissioner and to the appropriate circuit court. Additionally, collection activity would be suspended on the assessment of severance taxes for license years 2008 through 2011 until July 1, 2013. The bill would also suspend the collection activity for the license years 2012 and 2013 provided that the person filing the return for such taxes includes with the return a good faith payment of the tax due or a good faith report of the tax due. Collection activity would not be required to be suspended if collection of any tax, interest, or penalty is jeopardized by delay, nor would collection activity be required to be suspended for any amount of unpaid license tax reported by a person as due in filing a severance tax return.

The bill would also require the Tax Commissioner to convene a working group consisting of representatives of the localities levying severance taxes and the coal, oil, and gas companies subject to the tax. The working group would review the methodology for determining gross receipts subject to the severance taxes and such other issues related to the imposition of severance taxes. Upon completion of the review of the methodology, the Tax Commissioner shall have the discretion to review with the working group such other tax issues as may be in dispute between such localities and such representatives. The bill requests the working group to begin as soon as possible after the conclusion of

the 2012 General Assembly Session and to identify any changes to current law, regulation, or policy that it considers desirable when addressing the above issues. The bill would also request the working group to provide a report and recommendations to the chairmen of the Senate and House Committees on Finance no later than December 1, 2012.

Under current law, *Va. Code* § 58.1-3703.1 provides uniform ordinance provisions for the BPOL tax. The statute includes provisions for license requirements, due dates and penalties, situs of gross receipts, limitations and extensions, administrative appeals, judicial review, and rulings. Currently, ordinances levying a license tax must include provisions substantially similar to *Va. Code* § 58.1-3703.1(A) to be valid.

This bill contains an emergency clause and would be in force from its passage.

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. Based on similar working groups, the Department estimates that conducting this working group may require travel expenses and some diversion of efforts from other functions. To the extent that the bill restricts the right of localities to collect local assessments and the right of taxpayers to appeal local assessments, this bill would have an unknown impact on local revenues.

9. Specific agency or political subdivisions affected:

Department of Taxation
Localities imposing severance taxes

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 may continue to impose the tax at those rates.

Uniform Ordinance Provisions

Virginia Code § 58.1-3703.1 provides uniform ordinance provisions for the BPOL tax. *Virginia Code* § 58.1-3703.1(A) sets forth the limitations and requirements of the BPOL tax, including provisions for license requirements, due dates and penalties, situs of gross receipts, limitations and extensions, administrative appeals, judicial review, and rulings. Ordinances levying a license tax must include provisions substantially similar to *Va. Code* § 58.1-3703.1(A) to be valid.

Local Severance Taxes

Under current law, localities are generally prohibited from imposing a license tax or fee on any person engaged in the business of severing minerals from the earth for the privilege of selling the severed minerals at wholesale at the place of severance.

However, localities are authorized to levy a severance tax that is capped at one percent of the gross receipts from the sale of coal or gases severed within such county. The gross receipts are the fair market value measured at the time the coal or gases are utilized or sold for utilization in the locality or at the time they are placed in transit for shipment from the locality. In calculating the fair market value, no person engaging in the production and operation of severing gases from the earth in connection with coal mining is permitted to take any deductions, including but not limited to, depreciation, compression, marketing fees, overhead, maintenance, transportation fees and personal property taxes. According to *Tax Rates 2010*, Virginia's Cities, Counties, and Selected Towns, by Weldon Cooper Center for Public Policy, the City of Norton and the Counties of Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise report imposing the severance tax at a rate of one percent.

For those localities that comprise the Virginia Coalfield Economic Development Authority, the revenues generated from this tax are allocated as follows: 75% are paid into a special fund in each locality called the Coal and Gas Road Improvement Fund, where at least 50% are spent on road improvements and 25% may be spent on new water and sewer

systems within the locality; and the remaining 25% of the revenue is paid to the Virginia Coalfield Economic Development Fund. The Virginia Coalfield Economic Development Authority is comprised of the City of Norton, and the Counties of Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise.

In addition, a county or city may allocate 25% of the revenue in the Coal and Gas Road Improvement Fund to the construction, repair, or enhancement of water and sewer systems; however, if this option is initiated by the county or city, it must develop and adopt by resolution an annual plan for such projects and their funding. 2004 House Bill 1426 (Chapter 871, 2004 Acts of Assembly) provided that any revenues dedicated for water and sewer systems would be distributed directly to the local public service authority.

A county or city may also levy an additional license tax on every person engaging in the business of severing gases from the earth at a rate not to exceed one percent of the gross receipts from the sale of gases severed within such locality. The revenue received from the tax is paid into the general fund, except for the localities that comprise the Virginia Coalfield Economic Development Authority. In those localities, 50% of the revenues are paid to the Virginia Coalfield Economic Development Fund.

Proposal

This bill would require counties and cities that imposed a license tax for the severance of coal, gas, or oil for the 2008, 2009, 2010, or 2011 license years to adopt the uniform ordinance provisions for the Business, Professional and Occupational License ("BPOL") tax set out in *Va. Code* § 58.1-3703.1(A) with a retroactive effective date to the 2008 license year within 90 days of the bill becoming effective. The localities would not be required to include provisions substantially similar to those set forth for license requirements and situs of gross receipts.

All persons assessed with such taxes would be allowed the rights and remedies in the provisions, including the appeal procedures. Additionally, within 60 days of the provisions becoming effective, localities would be required to provide written notice by certified mail to all taxpayers subject to any of the severance taxes for license years 2008 through 2011 that the locality has adopted or will adopt the uniform ordinance provisions retroactive to 2008. The bill would provide that an ordinance amended in such a manner complies with the requirement of *Va. Code* § 58.1-3703.1 that any ordinance imposing a license tax include provisions substantially similar to the uniform ordinance provisions.

The bill would also provide that any person assessed with a severance tax for license years 2008 through 2013 would be allowed to file an administrative appeal to the local assessing official only during the period beginning July 1, 2013, and ending July 1, 2014. Such appeal may be further appealed to the Tax Commissioner and to the appropriate circuit court. Additionally, collection activity would be suspended on the assessment of severance taxes for license years 2008 through 2011 until July 1, 2013. The bill would also suspend the collection activity for the license years 2012 and 2013 provided that the person filing the return for such taxes includes with the return a good faith payment of the tax due or a good faith report of the tax due. Collection activity would not be required to be suspended if collection of any tax, interest, or penalty is jeopardized by delay, nor

would collection activity be required to be suspended for any amount of unpaid license tax reported by a person as due in filing a severance tax return.

The bill would also require the Tax Commissioner to convene a working group consisting of representatives of the localities levying severance taxes and the coal, oil, and gas companies subject to the tax. The working group would review the methodology for determining gross receipts subject to the severance taxes and such other issues related to the imposition of severance taxes. Upon completion of the review of the methodology, the Tax Commissioner shall have the discretion to review with the working group such other tax issues as may be in dispute between such localities and such representatives. The bill requests the working group to begin as soon as possible after the conclusion of the 2012 General Assembly Session and to identify any changes to current law, regulation, or policy that it considers desirable when addressing the above issues. The bill would also request the working group to provide a report and recommendations to the chairmen of the Senate and House Committees on Finance no later than December 1, 2012.

This bill contains an emergency clause and would be in force from its passage.

Similar Legislation

Senate Bill 658 is identical to this bill.

House Bill 10 would provide that any locality that did not impose the BPOL tax in license year 2011 may only impose the BPOL tax on the Virginia taxable income or net income of a business, rather than on gross receipts.

cc : Secretary of Finance

Date: 2/19/2012 AM
DLAS File Name: HB1233FE161