

DEPARTMENT OF TAXATION

2016 Fiscal Impact Statement

1. **Patron** David W. Marsden

2. **Bill Number** SB 218

3. **Committee** Senate Finance

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

4. **Title** Business, Professional, and Occupational
License Tax; Staffing Firms

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would exclude wages, salaries, and other benefits paid by a staffing firm to an independent contractor who receives a Form W-2 or Form 1099 and is working for the use of the staffing firm's clients pursuant to a professional employer organization services or temporary help services contract from the gross receipts of the staffing firm for the purposes of the Business, Professional, and Occupational License ("BPOL") Tax.

Under current law, employee benefits such as wages, salaries, payroll taxes, payroll deductions, workers' compensation costs, benefits and other similar expenses paid by a staffing firm to a contract employee for the period of time that such employee is employed for the use of a client pursuant to the terms of a professional employer organization services or temporary help services contract are excluded from the gross receipts of the staffing firm for the purposes of BPOL Tax. Administrative fees received by the staffing firm from a client company are included in the firm's taxable gross receipts.

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:**

To the extent that the gross receipts of taxpayers are lowered by amounts paid by staffing firms to independent contractors hired for the use of a client company, this bill would have an unknown negative impact on local revenues. In Fiscal Year 2014, the BPOL tax and fee generated approximately \$674.3 million for the counties, cities, and towns that imposed the tax. This bill would have no impact on state revenues.

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 may either be the gross receipts or the Virginia taxable income of the business. 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. According to *Virginia Local Tax Rates, 2014*, published by the Weldon Cooper Center for Public Service, all 38 cities, 48 counties and 115 towns currently report imposing the BPOL tax or fee.

Legislation enacted in the 2011 Session of the General Assembly, House Bill 1437 (*Acts of Assembly 2011*, Chapter 685), allowed localities the option to impose the BPOL tax on either the gross receipts or the Virginia taxable income of a business, except for certain public service corporations. The BPOL tax on i) telephone and telegraph companies, ii) water companies, and ii) certain heat, light and power companies is required to be imposed on the gross receipts.. No locality currently imposes the BPOL tax on Virginia taxable income.

Staffing Firms

A staffing firm is defined as a person who provides professional employer organization ("PEO") services or temporary help services. Under a PEO services contract, the staffing

firm assumes employer responsibility for payroll, benefits, and other human resources functions with respect to employees of a client with no restrictions or limitations on the duration of employment. The client remains responsible for hiring, firing, promoting, etc. of the employees. The staffing firm agrees to pay the associated payroll expenses with funds deposited by the client for such purpose. The staffing firm cannot use these monies for any other purpose than that intended by the client. In return for its services, the staffing firm receives administrative fees from its clients, which may be on a fee-for-service basis or a percentage of total costs paid.

Under a temporary help services contract, the staffing firm temporarily assigns employees to support or supplement a client's workforce. The staffing firm provides its own employees to a client to perform the specific activities as contractually agreed. The staffing firm pays the associated payroll expenses to these employees the same as it pays its other employees. The staffing firm receives a fee based on the amount of time that its employees perform the client's activities.

Under current law, employee benefits such as wages, salaries, payroll taxes, payroll deductions, workers' compensation costs, benefits and other similar expenses paid by a staffing firm to a contract employee for the period of time that such employee is employed for the use of a client pursuant to the terms of a professional employer organization services or temporary help services contract are excluded from the gross receipts of the staffing firm for the purposes of BPOL Tax.

Administrative fees received by the staffing firm from a client company are included in the firm's taxable gross receipts.

In Ruling of the Tax Commissioner, Public Document 09-29 (3/30/2009), the Tax Commissioner held that benefits paid by a staffing firm to employees who receive a Form W-2 and employees treated as nonemployees who are issued a Form 1099 would not be included in the staffing firm's gross receipts. However, the Tax Commissioner held that benefits paid to an independent contractor who receives a Form 1099 do not qualify for the exclusion and would be included in the staffing firm's gross receipts unless the staffing firm can demonstrate that the classification of the independent contractor is erroneous or inapplicable.

Proposal

This bill would exclude wages, salaries, and other benefits paid by a staffing firm to an independent contractor who receives a Form W-2 or Form 1099 and is working for the use of the staffing firm's clients pursuant to a professional employer organization services or temporary help services contract from the gross receipts of the staffing firm for the purposes of the Business, Professional, and Occupational License ("BPOL") Tax.

The effective date of this bill is not specified.

Similar Legislation

House Bill 545 is functionally identical to this bill.

House Bill 217 would prohibit a locality from increasing the rate of its business machinery and tools tax, merchants' capital tax, and BPOL tax and fees above the locality's rates in effect as of January 1, 2016.

cc : Secretary of Finance

Date: 1/16/2016 AM
DLAS File Name: SB218F161