

**DEPARTMENT OF TAXATION  
2011 Fiscal Impact Statement**

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| <p>1. <b>Patron</b> Frank M. Ruff, Jr.</p> <p>3. <b>Committee</b> Senate Finance</p> <p>4. <b>Title</b> Business, Professional, and Occupational License Tax; Unprofitable Businesses</p> | <p>2. <b>Bill Number</b> <u>SB 1408</u></p> <p><b>House of Origin:</b><br/><u>  X  </u> <b>Introduced</b><br/><u>     </u> <b>Substitute</b><br/><u>     </u> <b>Engrossed</b></p> <p><b>Second House:</b><br/><u>     </u> <b>In Committee</b><br/><u>     </u> <b>Substitute</b><br/><u>     </u> <b>Enrolled</b></p> |
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**5. Summary/Purpose:**

For taxable years beginning on or after January 1, 2012, this bill 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. 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 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 unprofitable businesses would be exempt from the BPOL tax, the bill would have an unknown negative revenue impact on local revenues. 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.

### 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.

### Proposal

For taxable years beginning on or after January 1, 2012, this bill 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. 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.

The effective date of this bill is not specified.

### Similar Legislation

**House Bill 1437** would allow localities to impose the BPOL tax on either the gross receipts or the Virginia taxable income of a business.

**House Bill 1587** would clarify that the Cities of Virginia Beach and Chesapeake by ordinance may provide an exemption, refund, rebate, or other relief from the BPOL Tax for businesses locating for the first time in either city for a period not to exceed 2 years. The bill also provides that a business is not deemed to locate for the first time in one of the cities on the basis of merger, acquisition, similar business combination or a change in business form.

**Senate Bill 753** would provide additional time limitations by which the Tax Commissioner must rule on BPOL administrative appeals and requests for advisory written opinions. The bill also would limit the Tax Commissioner to reviewing matters of law and would prohibit him from considering any additional or revised facts when ruling on any request for reconsideration.

cc : Secretary of Finance

Date: 1/22/2011 AM  
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