

DEPARTMENT OF TAXATION

2011 Fiscal Impact Statement

1. **Patron** Richard L. Saslaw

2. **Bill Number** SB 753

3. **Committee** Senate Finance

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

4. **Title** Business, Professional, and Occupational
License Tax; Administrative Appeals
Process

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would require the Tax Commissioner to issue written advisory opinions regarding the Business, Professional, and Occupational License ("BPOL") Tax and BPOL administrative appeals within 90 days of receipt of the request unless the affected parties are notified that a longer period will be required. Such longer period would not be allowed to exceed 90 days from the notice. The bill would also require that requests for reconsideration of administrative appeals must be submitted within 45 days of the date of the determination and 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. The Tax Commissioner would be required to rule on requests for determination or on any adjustments to the initial determination within 30 days of receipt of the request or documentation for the proposed adjustments.

There is currently no time limit by which the Tax Commissioner must issue advisory written opinions regarding the BPOL Tax. The Tax Commissioner is required to rule on BPOL administrative appeals within 90 days of receipt unless the affected parties are notified that a longer period will be required. Additionally, in the event that an affected party requests reconsideration, TAX currently allows the opposing party 30 days to respond.

The bill would be effective for BPOL administrative appeals and requests for advisory written opinions first appealed or submitted to the Tax Commissioner on or after July 1, 2011.

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

7. **No Fiscal Impact** (See Line 8.)

8. **Fiscal implications:**

This bill would have no impact on state or local revenues.

9. Specific agency or political subdivisions affected:

Department of Taxation
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.

Advisory Opinions

TAX has the authority to issue advisory written opinions that interpret the BPOL statutes and the BPOL Regulations (23 *Virginia Administrative Code* ("VAC") 10-500 et seq.). There is currently no time limit by which TAX must issue written advisory opinions regarding the BPOL Tax. TAX is not required to interpret any local ordinances. Examples of the issues that TAX may render advisory opinions upon include:

- Interpretation of changes made to the BPOL statutes.

- Questions, the answers of which depend upon both state law and the laws of a locality.
- Situations where two jurisdictions are attempting to tax the same gross receipts.
- Classifications of businesses under the BPOL enabling legislation.
- Whether a business qualifies as a manufacturer under existing court decisions.
- Whether a business qualifies for deductions, exclusions, or reduced rates of tax contained within the BPOL-enabling legislation.
- Situs rules contained within the BPOL-enabling legislation.
- Whether changes made to a local statute conform with required changes under recent Virginia law.

Proposal:

This bill would require the Tax Commissioner to issue written advisory opinions regarding the BPOL Tax within 90 days of receipt of the request unless the affected parties are notified that a longer period will be required. Such longer period would not be allowed to exceed 90 days from the notice.

Appeals Process

A taxpayer must file the Application for Review within one year of the last day of the tax year for which such assessment is made or within one year from the date of the appealable event, whichever is later. Upon the timely filing of an Application for Review, the local assessing officer makes a final written determination on the taxpayer's application. The taxpayer then has 90 days from the date of the local assessing officer's final written determination to appeal that determination to TAX.

Code of Va. § 58.1-3703.1(A)6, which authorizes TAX to hear appeals of final local determinations of BPOL appeals, mandates that the appeal shall proceed in the same manner as an appeal of state taxes to TAX pursuant to *Code of Va. § 58.1-1821*. TAX has promulgated a comprehensive regulation, *23VAC10-20-165* which sets forth the procedural rules for all administrative appeals to TAX. In addition, in *23VAC10-500-640 et seq.*, the BPOL regulation promulgated by TAX sets forth procedural rules specific to administrative appeals of the BPOL tax.

TAX provides written notice to the local assessing officer when the taxpayer has filed a timely appeal to TAX. The local assessing officer then has 30 days to file a reply with additional information or to file a written request to address issues first raised on appeal to TAX. If the local assessing officer files a written request to address new issues, the appeal must return to the local assessing officer and the local appeals process starts anew. Once an appeal is returned to the local assessing officer, the local assessing officer must issue a new final written determination which can be appealed to TAX. TAX must issue a determination to the taxpayer within 90 days of receipt of the taxpayer's application, unless the taxpayer and the local assessing officer are notified that a longer period will be required.

Proposal:

This bill would require the Tax Commissioner to issue BPOL administrative appeals within 90 days of receipt of the request unless the affected parties are notified that a longer

period will be required. Such longer period would not be allowed to exceed 90 days from the notice.

Requests for Reconsideration

Typically, TAX requires that the party requesting reconsideration demonstrate one of the following:

- The facts upon which the original determination is based are misstated or inaccurate, and the determination would have a different result based on a correction of the misstatement of the facts presented or a clarification of the original facts;
- The law upon which the original determination is based has been changed by legislation, court decision or other authority effective for the tax period(s) at issue;
- The policy upon which the original determination is based is misapplied, and the determination would have a different result based on the application of the proper policy; or
- The party has discovered additional evidence or documentation that was not available to the party at the time the original administrative appeal was filed with the department, and the additional evidence or documentation could produce a result different from the original determination.

Proposal:

This bill would require that requests for reconsideration of administrative appeals must be submitted within 45 days of the date of the determination and restrict requests for reconsideration to matters of law. TAX would be prohibited from considering additional facts or revised facts when ruling on requests for reconsideration. The Tax Commissioner would be required to rule on requests for determination or on any adjustments to the initial determination within 30 days of receipt of the request or documentation for the proposed adjustments.

TAX has a multi-level review process for written advisory opinions, administrative appeals, and requests for reconsideration. In order to ensure correctness, each determination and advisory opinion is reviewed at several levels prior to being submitted to the Tax Commissioner. Additionally, TAX encourages affected parties on both sides to submit relevant information. Often, due to incomplete submissions, it takes several attempts before TAX has all of the relevant information. Given the complicated nature of some administrative appeals and requests for reconsideration, the time limitations proposed in this bill may be too restrictive. For example, the bill proposes that TAX be required to rule on requests for reconsideration within 30 days of receipt. However, TAX typically allows the opposing party 30 days to respond to the request before reviewing the evidence and making its determination.

The bill would be effective for BPOL administrative appeals and requests for advisory written opinions first appealed or submitted to the Tax Commissioner on or after July 1, 2011.

Similar Legislation

House Bill 1437 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.

cc : Secretary of Finance
Date: 1/14/2011 AM
DLAS File Name: SB753F161