

DEPARTMENT OF TAXATION

2014 Fiscal Impact Statement

1. **Patron** Christopher T. Head

3. **Committee** House Finance

4. **Title** Business, Professional, and Occupational License Tax; Appeals of Classification

2. **Bill Number** HB 497

House of Origin:

 Introduced

 X **Substitute**

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

The Department understands that the patron plans to introduce a substitute bill. This impact statement addresses the substitute bill.

This bill would allow taxpayers to appeal to the locality and the Department of Taxation the Business, Professional, and Occupational License ("BPOL") tax classification or subclassification applicable to a business, regardless of whether the appeal is in conjunction with an assessment, examination, audit, or any other action taken by the locality. Additionally, the bill would allow taxpayers to request written rulings from the locality and the Department of Taxation regarding the classification or subclassification applicable to a business.

Currently, in order to appeal BPOL tax issues, taxpayers 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 the Department of Taxation ("Department").

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:**

Administrative Costs

To the extent that the bill results in localities hearing more appeals, this bill would result in localities incurring additional administrative expenses. To the extent that passage of this bill allows additional appeals to localities, the bill would likely result in additional appeals

to the Department, along with additional administrative costs. Because classification issues are typically fact driven determinations, such appeals may require the Department to conduct site visits. Currently, the Department 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. The additional appeals generated by this bill may make it more difficult for the Department to meet this deadline.

Revenue Impact

The revenue impact of this bill is not known.

9. Specific agency or political subdivisions affected:

Department of Taxation
All localities imposing the BPOL tax or fee

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.

Advisory Opinions

Under current law, the Department has the authority to issue advisory written opinions that interpret the BPOL statutes and the BPOL Regulations (23 VAC 10-500 et seq.). The Department is not required to interpret any local ordinances. Examples of the issues that the Department 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.

Appeals Process

A taxpayer must file an 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 the Department.

Virginia Code § 58.1-3703.1(A)6, which authorizes the Department 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 the Department pursuant to *Va. Code* § 58.1-1821. The Department has promulgated a comprehensive regulation, 23 VAC 10-20-165 which sets forth the procedural rules for all administrative appeals to the Department. In addition, in 23 VAC 10-500-640 et seq., the BPOL regulation promulgated by the Department sets forth procedural rules specific to administrative appeals of the BPOL tax.

The Department provides written notice to the local assessing officer when the taxpayer has filed a timely appeal to the Department. 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 the Department. 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 the Department. The Department 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 allow taxpayers to appeal to the locality and the Department of Taxation the Business, Professional, and Occupational License ("BPOL") tax classification or subclassification applicable to a business, regardless of whether the appeal is in conjunction with an assessment, examination, audit, or any other action taken by the locality. Additionally, the bill would allow taxpayers to request written rulings from the locality and the Department of Taxation regarding the classification or subclassification applicable to a business.

The bill also would require each locality imposing the BPOL tax or fee to maintain on its website the specific procedures that must be followed regarding an administrative appeal of the BPOL tax classification or subclassification as well as the name and address to which the appeal should be directed.

The effective date of this bill is not specified.

Similar Legislation

House Bill 371 would require localities to impose the BPOL tax on the Virginia taxable income or net income of a business, rather than on gross receipts beginning in license year 2015.

House Bill 434 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, 2014.

House Bill 435 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, 2014. The bill would also establish refundable income tax credits equal to 33 percent of such taxes paid during the taxable year beginning with taxable year 2014.

Senate Bill 112 would require the General Assembly to appropriate an amount sufficient to pay on behalf of taxpayers the total amount of BPOL Tax and Machinery and Tools Tax owed to a locality beginning in any calendar year in which the unemployment rate of the locality in the most recent calendar year for which data is available is equal to or greater than twice the statewide average unemployment rate.

cc : Secretary of Finance

Date: 1/21/2014 AM
DLAS File Name: HB497F161