# DEPARTMENT OF TAXATION
# 2017 Fiscal Impact Statement

**1. Patron** Timothy D. Hugo

**2. Bill Number** HB 1961

**House of Origin:**
_____ **Introduced**
_____ **Substitute**
_____ **Engrossed**

**Second House:**
_____ **In Committee**
_____ **Substitute**
__X__ **Enrolled**

**3. Committee** Passed House and Senate

**4. Title** License tax, local; methodology for deducting certain gross receipts.

**5. Summary/Purpose:** This bill would require the Department of Taxation to promulgate regulations that clarify the appropriate methodology for determining deductible gross receipts attributable to business conducted in another state or a foreign country. The bill requires the regulations to be based on previous Rulings of the Tax Commissioner and the decision of the Supreme Court of Virginia in *The Nielsen Company, LLC v. County Board of Arlington County*, 289 Va. 79 (2015).

The effective date of this bill is not specified.

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

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

**8. Fiscal implications:**

Administrative Costs

The Department of Taxation ("the Department") considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

Because the regulation would codify an existing policy of the Department of Taxation as upheld by the Virginia Supreme Court, there would be no impact on local revenue from the BPOL tax. The regulation would apply to BPOL tax, which has no impact on state revenue.

**9. Specific agency or political subdivisions affected:** Department of Taxation and Cities, Counties and Towns imposing the BPOL tax.

**10. Technical amendment necessary:** No.

## 11. Other comments:

<u>Current Law</u>

The Business, Professional, Occupational License (:BPOL") Tax is imposed on gross receipts attributable to a definite place of business using rules spelled out in the statute. In cases where the statutory attribution rules cannot be applied the statute mandates the use of payroll apportionment.

Several deductions are allowed from the gross receipts attributed to a definite place of business. One is receipts attributable to business conducted in another state in which the business is liable for an income tax. Disputes have arisen over how a business computes this deduction when receipts were attributed to its definite place of business by payroll apportionment.

In Public Document (P.D.) 10-228 (9/29/2010), the Department ruled that when gross receipts are apportioned by using the general payroll apportionment formula, the amount of the out-of-state deduction would be determined by multiplying the total out-of-state gross receipts by the same payroll factor used to determine the situs of gross receipts. The Department further clarified how the out-of-state deduction should be computed when payroll apportionment is used to situs gross receipts in P.D. 12-88 (5/31/2012), P.D. 12-146 (8/31/2012), and P.D 14-29 (3/5/2014).

In *The Nielsen Company, LLC v County Board of Arlington County*, 289 Va. 79 (2015) the Virginia Supreme Court upheld the Department's methodology set forth in its Public Documents for computing the out-of-state deduction when payroll apportionment is used to situs gross receipts because it "strikes a balance between the competing interests of the licensing jurisdiction and the taxpayer."

<u>Proposed Legislation</u>

This bill would require the Department to promulgate regulations clarifying the computation of the out-of-state deduction when payroll apportionment has been used to attribute gross receipts to a definite place of business. The regulations would be based on its Public Documents and the decision of the Supreme Court of Virginia in *Nielsen* case.

cc : Secretary of Finance

Date: 2/15/2017 JPJ
HB1961F161