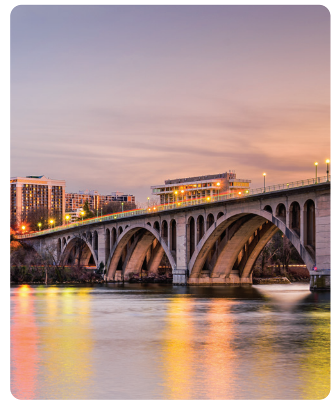
Decoding Virginia's "Hidden" BPOL Tax



More than 100 cities and counties throughout the Commonwealth of Virginia subject businesses to a Business, Professional, and Occupational License (BPOL) tax for the privilege of doing business within their respective localities. Many companies consider it to be a "hidden" tax because it is often difficult to find the answers to basic questions regarding this tax—when is the BPOL tax due? when is a company subject to it?—and perhaps most important—how does the tax apply to my company's business operations in a specific locality?

To further complicate matters, each licensable activity can be taxed at a different rate, depending on locality, as noted in the following table.

Virginia BPOL Tax Rates

Licensable Activity	Examples	Tax Rate per $100 of Gross Receipts*
Contracting	Subdividing and improving real estate, building houses or commercial buildings, and related repair activities.	$0.16
Wholesale Sales	Sale of tangible property or software at the wholesale level. Note: Manufacturing activities are exempt from BPOL tax in Virginia.	$0.05
Retail Sales	Sale of tangible property and the sale of software at the retail level.	$0.20
Financial, Real Estate, and Professional Services	Professional services such as engineering, legal, and accounting services.	$0.58
Repair, Personal, Business, and Other Services	Consulting services such as advertising, data processing, computer systems and development, and cleaning services.	$0.36

**Tax rates provided for representation purposes only.*

What Is the BPOL Tax, and How Is it Determined?

It is important to note that BPOL tax is a *gross receipts tax*. This means it is assessed based on the gross revenue that a business generates, not on the net income a taxpayer receives.

Example #1

SoftwareSales is a fictitious IT company operating in a Virginia county that imposes an annual BPOL tax. In calendar year 2020, the company earns $1 million in revenue (gross receipts) for providing services to its customers, while incurring $2 million in expenses. For federal and state income tax purposes, the company has a $1 million loss and owes no income tax. For BPOL tax purposes, however, the company owes tax based on the entire amount of $1 million in revenue.

The BPOL tax offers very few deductions, and taxpayers may not directly collect and remit BPOL tax from their customers in the same manner as other Virginia non-income taxes (such as sales taxes). Therefore, the BPOL tax may present taxpayers with a hidden tax liability since they may owe BPOL tax during years when they do not owe income taxes because their business operated at a loss.

When can a locality subject a business to BPOL tax?

Taxpayers may be surprised to find that their operations are subject to BPOL tax even when they have conducted only a minor amount of business in one of the hundreds of Virginia localities that impose it. Virginia localities can impose BPOL tax on taxpayers who have a "definite place of business" within the locality. This term applies when a company regularly and continuously conducts business (e.g., meets with the customers) from any location in the locality for 30 consecutive days or more.

Businesses headquartered outside Virginia are often surprised to discover that they are subject to BPOL tax when their only contact with a specific locality was to have leased temporary office space within the locality.

Can business operations be subject to BPOL tax in more than one locality? Can BPOL taxes be paid to a single, centralized location?

When taxpayers have multiple definite places of business in Virginia, they may owe BPOL tax in each individual locality. To make matters more complex, taxpayers cannot remit their BPOL taxes to one central tax jurisdiction, such as a tax division of the Commonwealth, for distribution to the localities where they have been doing business. Thus, a business with three separate sales offices in different Virginia localities could be forced to remit a separate BPOL tax payment to each.

Further complicating matters is that each locality has unique BPOL tax rates and due dates for a taxpayer's BPOL tax reports. This lack of standardization requires taxpayers to separately identify and address the individual BPOL tax requirements of each locality. The process is not only confusing but can be a tremendous strain on the taxpayer's staff and resources.

How does a taxpayer determine the correct amount of BPOL tax due when it has offices in more than one locality or when its activity within the locality is a part of national or international business operations?

As previously discussed, because each Virginia locality has its own tax rates and due dates, a business with multiple offices must adhere to the requirement of each individual locality to ensure their business complies with its unique BPOL tax regulations. These requirements are particularly challenging because it is often difficult for taxpayers to determine how much gross receipts their businesses earn when their operations within a Virginia locality are integrated into their national or international business operations.

Example #2

SoftwareSales is a fictitious international IT firm that sells software and provides a broad range of related consulting services. The company has an office in northern Virginia where its locally based employees provide consulting and support services to customers in the defense industry. Because SoftwareSales customers are located throughout the U.S., its Virginia-based employees often travel outside the Commonwealth to provide services. In addition, Virginia-based employees provide support services for customers located outside the Commonwealth from their Virginia offices. Simultaneously, the company's non-Virginia employees provide services for SoftwareSales' Virginia-based customers from their respective out-of-state offices.

These factors combine to make it difficult for SoftwareSales to determine when to source service revenue to its northern Virginia office for BPOL tax purposes.

Experience Provides an Advantage

When vetting business partners to assist with your BPOL tax needs, it is important to select one with broad experience in all facets of this highly complex "hidden" tax. The right partner will help you identify BPOL tax overpayments cost effectively and navigate byzantine administrative processes to obtain a full refund of these overpayments. Ryan will review your existing BPOL tax accounting systems and assist your business in implementing advanced processes, so you are aware of your options regarding how your BPOL tax liabilities are determined.

Finally, the right business partner should proactively assist your company in resolving BPOL tax audits or other interactions with tax authorities acting on behalf of the Virginia localities. Access to the right resources will help your business achieve visible results when addressing your BPOL tax responsibilities. Having Ryan's team of BPOL tax specialists on your side will ensure your business addresses these responsibilities in the most cost-effective manner.

For complete assistance with all your Virginia BPOL tax needs, please contact Ryan today.