

Virginia Chamber of Commerce
Statement to BPOL Subcommittee,
Commission on the Revision of Virginia's State Tax Code (HJR 347)
September 25, 2003

The business community's complaints about the business license (or BPOL) tax are long standing. As most of you remember in the mid 1990s the concerns led to a major effort at reform that produced several improvements. Those reforms reduced pressure from the business community to eliminate this tax, but the pressure has not gone away and there remains a need and an opportunity for further reform.

Over the years various bills have capped the rates, limited the ability of localities to tax transactions outside their borders, imposed more uniformity and improved the appeal rights of taxpayers. Many localities have seen the wisdom of entirely waiving the tax on the first \$100,000 of receipts, have reduced rates to draw in new businesses, and have worked to settle disputes without strong-arm tactics. The good examples set by these localities provide a road map for the General Assembly to follow.

The BPOL tax is a sales tax masquerading as an income tax. Most service providers pay the tax. Eliminating the BPOL tax would solve many problems, but any method used to replace the revenue could and probably would create new problems. Any method of raising another half a billion dollars for local budgets would certainly shift the burden from one group of businesses to another, or to individual taxpayers.

If the state were in a position to take over a local government function or fully fund a shared function of comparable dollar value, full repeal might be possible. It is hard to imagine now. The General Assembly has other tax cut promises to keep. So what can we do to improve the situation?

Retailers especially resent this tax. Retailers pay BPOL and also collect sales taxes on the same transactions. What do you do about the retailers?

- You could exempt them from BPOL entirely, since their sales are also subject to the sales tax. This would likely require a substantial increase in another revenue source, although not as substantial as it would take to eliminate the whole tax.
- You could reduce the maximum retail rate from 20 cents per \$100 down to 15 or 10 cents in recognition of tighter profit margins in today's economy. The Chamber would support this step, and it could be phased in over several years.
- You could allow retailers (and other BPOL payers) to charge the tax to their customers. That opportunity has been granted to automobile dealers. In reality, the customer ultimately pays the tax. Why not make that fact explicit where possible?
- If the General Assembly does eliminate the BPOL tax or remove it from retailers, it must also eliminate the merchants' capital tax.

- The General Assembly should not allow retailers in towns with the BPOL tax to be hit with a merchant's capital tax by the encompassing county as well.

It will be far easier to live with BPOL into the future if we can:

- Develop an alternate route for an independent and final resolution of appeals without the need to go to court, at least for cases below a certain dollar value.
- Strengthen the existing process for Tax Department advisory opinions and appeals.
- Eliminate the requirement that disputed local business taxes be paid before an appeal can be filed in court (you eliminated the "pay to play" rule for state taxes this year.)
- Prohibit localities from denying a business its other licenses and permits while a valid tax appeal is pending.

Finally, if the tax remains in effect, we further suggest:

- Review all the rate caps again in light of current economic data. Some of Virginia's best-managed localities are thriving with rates below the caps.
- The Chamber has not endorsed a sales tax on services, but if the sales tax is extended to any service, that service category should then be exempt from BPOL.
- Exempt the first \$100,000 earned by a business (with a lower cap in towns). Once a business reaches \$101,000 many localities still tax the full gross.
- Maintain or strengthen the rules in place against taxing sales and services delivered to other states.

We have met with representatives of local government about possible reforms to BPOL administration and the appeals available to taxpayers. Not all of them agree that there are any problems whatsoever, although some are open to change.

Some like the fact that they can ignore formal rulings of the State Tax Commissioner. Many do not care that their interpretation on some question is 180 degrees different from everybody else and contrary to precedents. The General Assembly's push for uniformity is unimportant to them. Many are reluctant to have their judgement questioned or decisions reversed by anyone but a Circuit Court judge at the end of a long and expensive trial. Few taxpayers have the money or the willpower to go that route, which means those taxpayers have no real appeal rights at all. What good is an appeal you cannot afford? What good is a ruling the locality ignores? That is our central and most deeply felt complaint. This is an area where this Commission can do the most good.