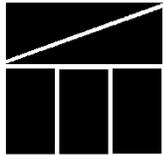


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes  Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



## Virginia Department of Planning and Budget Economic Impact Analysis

---

**23 VAC 10-500 – Business, Professional and Occupational License Tax Regulation**  
**Department of Taxation**  
**Town Hall Action/Stage: 4740/7798**  
April 2, 2017

---

### Summary of the Proposed Amendments to Regulation

The Department of Taxation (Tax) proposes to amend its Business, Professional and Occupational License (BPOL) Tax Regulation to incorporate the Tax Commissioner’s private letter ruling<sup>1</sup> related to the apportionment of deductions to gross receipts when taxable gross receipts are apportioned using the payroll apportionment formula. Tax initiated this action after the Tax Commissioner's private letter ruling was upheld by the Virginia Supreme Court in *The Nielson Company (US), LLC v. County Board of Arlington County*, 289 Va. 79 (2015).<sup>2</sup> After Tax initiated this action, the General Assembly passed legislation<sup>3</sup> requiring Tax to promulgate regulations to reflect “previous Rulings of the Tax Commissioner regarding subdivision B 2 of §58.1-3732 and the decision of the Supreme Court of Virginia in *The Nielsen Company, LLC v. County Board of Arlington County*.”

### Result of Analysis

Benefits likely outweigh costs for all proposed changes.

---

<sup>1</sup> Public Document (PD) 12-146 was issued August 31, 2012 and can be found at: <https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/12-146>

<sup>2</sup> <http://www.courts.state.va.us/opinions/opnscvwp/1140422.pdf>

<sup>3</sup> Chapter 50 of the 2017 Acts of the Assembly which can be found here: <http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0050>

## **Estimated Economic Impact**

Current Virginia law that allows the imposition of BPOL taxes requires that multi-state businesses assign gross receipts to an office or definite place of business whenever possible. Some businesses, however, do not have receipts that can be traced to just one definite place of business. In that case, the law allows them to apportion receipts according to the proportion of payroll employees in each of their definite places of business. Virginia law also sets out deductions that may be subtracted from gross receipts, or gross purchases, that would normally be taxable in Virginia. These deductions would also normally have to be traceable to a definite place of business. A dispute over such deductions led circuitously to this regulatory action. In 2012, the Tax Commissioner issued a private letter decision that allowed the apportionment of deductions using the payroll apportionment formula in instances where a business's taxable gross receipts had been apportioned using payroll apportionment. This private letter ruling was issued to address a tax dispute between the Nielson Company (US), LLC<sup>4</sup> and Arlington County, Virginia. Arlington County appealed this decision and that case (*The Nielson Company (US), LLC v. County Board of Arlington County*) eventually reached the Virginia Supreme Court which upheld the Tax Commissioner's decision on this matter. Tax now proposes to amend this regulation to reflect the Tax Commissioner's guidance on apportioning deductions to taxable gross receipts.

Because the Tax Commissioner's ruling as affirmed by the Virginia Supreme Court already has the force of law, no affected entity is likely to incur costs on account of these proposed regulatory changes. Both affected businesses and Virginia localities are very likely to benefit from these proposed regulatory changes as they will likely eliminate confusion about how deductions may be apportioned.

## **Businesses and Entities Affected**

These proposed regulatory changes will affect all businesses that have staff in Virginia and other political jurisdictions and that meet the criteria to apportion gross receipts using the payroll apportionment formula. Tax does not have an estimate for how many businesses would be affected.

---

<sup>4</sup> The Nielson Company, LLC promotes itself as a "global information and measurement company that provides clients with a comprehensive understanding of consumers and consumer behavior."

**Localities Particularly Affected**

No locality should be particularly affected by these proposed regulatory changes.

**Projected Impact on Employment**

These proposed regulatory changes are unlikely to significantly affect employment in the Commonwealth.

**Effects on the Use and Value of Private Property**

These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

**Real Estate Development Costs**

These proposed regulatory changes are unlikely to affect real estate development costs in the Commonwealth.

**Small Businesses:****Definition**

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

**Costs and Other Effects**

These proposed regulatory changes are unlikely to adversely affect any small business in the Commonwealth.

**Alternative Method that Minimizes Adverse Impact**

No small businesses will be adversely affected by these proposed regulatory changes.

**Adverse Impacts:****Businesses:**

Businesses in the Commonwealth are unlikely to experience any adverse impacts on account of this proposed regulation.

**Localities:**

No localities are likely to incur costs on account of these proposed regulatory changes.

**Other Entities:**

These proposed regulatory changes are unlikely to adversely affect other entities in the Commonwealth.

**Legal Mandates**

**General:** The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

**Adverse impacts:** Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

amh