

Rulings of the Tax Commissioner

Document Number: 99-306
Tax Type: BPOL Tax; Local Taxes
Brief Description: Gas severance company; Determining basis for tax
Topics: Local Power to Tax
Date Issued: 11/29/1999

November 29, 1999

Re: Taxpayer: Locality Assessing Tax: Business, Professional and Occupational License (BPOL) Tax

Dear*****:

This determination is issued upon the application for correction filed by you with the Department of Taxation pursuant to Code of Virginia § 58.1-3703.1(A)(5)(c). You appeal a final local determination upholding an audit assessment of BPOL taxes to ***** ("the Taxpayer") by the Commissioner of the Revenue of the ***** ("the County").

The local license tax and fee are imposed and administered by local officials. Code of Virginia § 58.1-3701 authorizes the department to promulgate guidelines and issue advisory opinions on local license tax issues. Additionally, Code of Virginia § 58.1-3703.1(A)(5) authorizes the department to receive taxpayer appeals of certain local license tax assessments and to issue determinations on such appeals. However, in no case is the department required to interpret any local ordinance with the exception of those appeals in which a local ordinance is relevant to the appeal of an assessment. Code of Virginia § 58.1-3701. The following determination is based on the facts presented to the department by the Taxpayer and the County as summarized below.

This determination addresses the issue of whether or not the Taxpayer is entitled to deduct certain costs of doing business from its gross receipts for the purpose of the license taxes imposed by the County under the authority of Code of Virginia Secs.58.1-3712, 58.1-3713, and 58.1-3713.4. Copies of cited sources are enclosed.

Code of Virginia § 58.1-3703.1(A)(5)(a) provides that, on appeal, a BPOL tax assessment is deemed prima facie correct. In other words, the local assessment will stand unless the taxpayer proves that it is incorrect.

FACTS

The Taxpayer severs gases from the earth in the County. The gases are compressed, processed and

transported through pipelines for delivery outside of the County. The Taxpayer states that it does not use or sell the gases for use within the County.

The County imposes license taxes on businesses engaged in severing gases. The Taxpayer applied for and received a license year 1995 license from the County. A subsequent audit of the Taxpayer's operations for license year 1995 revealed that, in calculating its gross receipts, the Taxpayer had deducted certain expenses, including (1) marketing charges; (2) transportation charges, including operation maintenance, operation overhead, depreciation and property taxes; and (3) compression charges.¹ The County, asserting that these deductions were improper, assessed additional license taxes. The Taxpayer filed this appeal with the department after the County rejected its application for correction.²

OPINION

Local license taxes on gas severance are authorized by Code of Virginia Secs.58.1-3712, 58.1-3713 and 58.1-3713.4 and are determined in the manner set forth in Code of Virginia § 58.1-3712:

[t]he governing body of any county or city may levy a license tax on every person engaging in the business of severing coal or gases from the earth. Such tax shall be at a rate not to exceed one percent of the gross receipts from the sale of coal or gases severed within such county. Such gross receipts shall be the fair market value measured at the time such coal or gases are utilized or sold for utilization in such county or city or at the time they are placed in transit for shipment therefrom....
[Emphasis added.]

For local license tax purposes, unless otherwise required by the context, "gross receipts" is defined to be "the whole, entire, total receipts, without deduction." Code of Virginia § 58.1-3700.1. The Taxpayer asserts that, as Code of Virginia § 58.1-3712 provides a special definition of "gross receipts," the general meaning of the term does not apply to Code of Virginia Secs.58.1-3712, 58.1-3713 and 58.1-3713.4. For the reasons set forth below, it is my determination that the Taxpayer is correct.

This issue was addressed by the Attorney General in an opinion concerning a business which severed coal in Wise County and transported it underground to Kentucky, where the coal was processed and sold. The Attorney General opined that, for purposes of Code of Virginia § 58.1-3712, gross receipts may be measured at "two distinct times:"

(1) when the coal [or gas] is used or sold for use within the taxing locality; or (2) when the coal [or gas] is placed in transit for shipment from the taxing locality. The use of the disjunctive indicates that two separate alternatives were intended ***** Section 58.1-3712 thus contemplates that coal [or gas] will be either used or sold for use in the taxing locality or exported for sale in another jurisdiction. In the latter event, the fair market value for purposes of determining gross receipts is measured at the time the coal [or gas] is placed in shipment ... and should not include value added by the processing of the coal [or gas] in [another jurisdiction]. [Citations omitted].

1990 Op. Att'y Gen. 223, 224.

As none of the gases severed by the Taxpayer are used or sold for use within the County, they must be valued when they are placed in transit for shipment. The Taxpayer asserts that it places the gases in transit for shipment at the wellhead. The County has presented no evidence or legal argument contradicting this assertion. Accordingly, it is my determination that, under these facts, the gases must be valued at the wellhead.

Gross receipts from sale may be used as a starting point when determining the value of the gases at the time they are placed in transit for shipment. Expenditures, however, which represent value added to the gases at, and subsequent to, the time they are placed in transit for shipment must be deducted. Such expenses may include processing, transportation and marketing expenses. The facts presented by the Taxpayer, however, are not sufficient to determine the extent to which the disallowed expenses were proper deductions.

CONCLUSION

I am returning this matter to the County for a determination of the fair market value of the gases at the wellhead consistent with this determination. To the extent that the fair market value is revised and the license year 1995 assessment is incorrect, the County should correct the assessment and refund any tax, penalty and interest erroneously collected. Once the County has made its final determination relating to this matter, the Taxpayer may appeal the County's determination to the department within 90 days from the date of the final local determination. If you have any other questions about this final determination, please do not hesitate to contact ***** Tax Policy Analyst, in my Office of Tax Policy at *****

Sincerely,

Danny M. Payne

Tax Commissioner
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¹The County also disallowed a deduction relating to swap sales. The Taxpayer, however, has informed the department that it concedes that portion of the assessment and has paid the tax, penalty and interest due thereon. This determination will not address that issue.

²The County initially contended that these assessments, made pursuant to local ordinances authorized by Code of Virginia §§58.1-3712, 58.1-3713 and 58.1-3713.4, could not be appealed to the department under Code of Virginia § 58.1-3703.1 (A)(5) (c). As the County has withdrawn its objection to the department's jurisdiction, this determination will not address that issue.
