

Rulings of the Tax Commissioner

Document Number: 12-44
Tax Type: BPOL Tax
Brief Description: Taxpayer severs gases from the earth ;Fair market value of the gas at the time it was placed in transit.
Topics: Local Power to Tax; Tangible Personal Property; Taxable Transactions
Date Issued: 04/18/2012

April 18, 2012

Re: Taxpayer: *****
Locality Assessing Tax: *****
Date of Final Local Determination: June 24, 2011
Business, Professional and Occupational License Tax

Dear *****:

This final state determination is issued upon the application for correction filed by ***** (the "Taxpayer") with the Department of Taxation. The Taxpayer appeals the assessment of Business, Professional and Occupational License (BPOL) tax issued to the Taxpayer by the ***** (the "County") for the 2007 tax year.

The BPOL tax is imposed and administered by local officials. *Virginia Code* § 58.1-3703.1 authorizes the Department to issue determinations on taxpayer appeals of BPOL tax assessments. On appeal, a BPOL tax assessment is deemed *prima facie* correct, *i.e.*, the local assessment will stand unless the taxpayer proves that it is incorrect.

The following determination is based on the facts presented to the Department summarized below. The *Code of Virginia* sections and public document cited are available on-line at www.tax.virginia.gov in the Tax Policy Library section of the Department's web site.

FACTS

The Taxpayer severs gases from the earth and places it in transit for sale outside of the County. The Taxpayer did not utilize or sell the gas for utilization within the County. Under audit, the County disallowed certain expenses, including depreciation, compression, maintenance, transportation fees and personal property taxes that the Taxpayer deducted to determine its gross receipts.

The Taxpayer appealed, asserting that expenses that add value to the gas between the wellhead and the point of sale are deductible from the gross receipts as provided under *Va. Code* § 58.1-3712. In its final determination, the County concluded that the deductions were improper, and upheld its assessment. The Taxpayer filed an appeal with the Department, contending that its gross receipts must be adjusted for the value added to the gases after being placed into transit.

The Taxpayer argues that *Va. Code* § 58.1-3712 provides a special definition of gross receipts and the general meaning of the term does not apply in computing the BPOL tax for the severance of gases from the earth. The County defends its assessment asserting that the BPOL statutes do not provide for deductions from gross receipts for depreciation, compression, maintenance, transportation, and property taxes.

ANALYSIS

For purposes of the BPOL tax, *Va. Code* § 58.1-3700.1 defines gross receipts as "the whole, entire, total receipts, without deduction." BPOL taxes on gas severance, authorized pursuant to *Va. Code* §§ 58.1-3712, 58.1-3713 and 58.1-3713.4, are determined at a rate not to exceed 1% of the gross receipts derived from coal or gases severed with such county. *Virginia Code* § 58.1-3712 defines such gross receipts to 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"

In 1990 Op. Att'y Gen. 223, 224, the Attorney General opined that, for purposes of *Va. Code* § 58.1-3712, gross receipts may be measured at two distinct times. According to the opinion, gross receipts may be measured (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. When gas or coal is placed in transit for shipment, gross receipts are determined to be the fair market value, measured at the time the coal or gas is placed in shipment. The fair market value should not include value added by the processing of the coal or gas in another jurisdiction.

The Department has previously addressed the issue of determining gross receipts for gas placed in transit at the wellhead. See Public Document (P.D.) 99-306 (11/29/1999). In such cases, 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 that represent value added to the gases at,

and subsequent to, the time they are placed in transit for shipment may be deducted. Such expenses may include processing, transportation and marketing expense. See also 2011 Op. Va. Att'y Gen. (10-110).

DETERMINATION

Based on the evidence provided, the Taxpayer placed its gas in transit at a wellhead in the County. As such, its gross receipts for the 2007 tax year would be measured by the fair market value of the gas at the time it was placed in transit. Such value would not include the value added from the time it was placed in transit until the point of sale.

Accordingly, I am returning this matter to the County for a determination of the fair market value of the gases at the wellhead. The Taxpayer should provide documentation acceptable to the County showing the amount of value added to the gas after it was placed in transit.

If you have any questions about this determination, you may contact, ***** in the Office of Tax Policy, Appeals and Rulings, at *****.

Sincerely,

Craig M. Burns
Tax Commissioner

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