

Gross Receipts:

Virginia BPOL Ruling Addresses Payroll Factor Calculation Involving In-State Remote Workers

Public Document No. 21-131, Va. Dept. of Tax. (9/28/21). In an administrative ruling involving a global company with employees working both at its Virginia office located within a certain Virginia county (County) and remotely from residences throughout Virginia, the Virginia Department of Taxation (Department) held in the company's favor in part that it must compute its payroll apportionment numerator for purposes of the County's business, professional and occupational license (BPOL) tax based only on payroll attributed to the definite place of business in that County. In doing so, the Department rejected the County's attempt to compute the company's BPOL payroll apportionment numerator by including the payroll of *all its employees* who worked in Virginia, concluding that any employees who worked remotely from homes outside of the County must be excluded from the numerator.

URL: <https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/21-131>

The company's proposed calculation methodology of the payroll apportionment numerator was to include only those employees working at the County location or those Virginia remote workers who reported to the County office. The Department clarified, however, that the payroll apportionment numerator "should not include any employees who worked remotely outside of the County, regardless of what office they reported to." In making this clarification, the Department explained that requiring the payroll of home-based employees to be apportioned using the suggested "direction and control basis" for BPOL tax purposes "would reintroduce the types of factual complexities that payroll apportionment was designed to avoid," and thus the company "could not commingle another situs rule with payroll apportionment."

Further, in responding to the County's reference to state corporate income tax caselaw from other jurisdictions, the Department reasoned that a taxpayer's activities within a "state as a whole" would be relevant in determining the taxpayer's liability for such type of tax but that the BPOL tax "is a local tax separate and distinct from a state-level corporate income tax" and thus "has no relevance whatsoever on the issue presented." Please contact us with any questions.

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