

# Rulings of the Tax Commissioner

**Document Number:** 13-218  
**Tax Type:** BPOL Tax  
**Brief Description:** Taxpayer is a charitable nonprofit organization exempt from the BPOL tax  
**Topics:** Exemptions; Local Taxes Discussion; Nonprofits  
**Date Issued:** 12/12/2013

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December 12, 2013

Re: Request for Advisory Opinion  
Business, Professional and Occupational License tax

Dear \*\*\*\*\*:

This is in response to your letter requesting an advisory opinion on behalf of your client, \*\*\*\*\* (the "Taxpayer"), concerning whether it is exempt from the Business, Professional and Occupational License (BPOL) tax.

The local license fee and tax are imposed and administered by local officials. *Virginia Code* § 58.1-3701 authorizes the Department to promulgate guidelines and issue advisory opinions on local license tax issues. The following opinion has been made subject to the facts presented to the Department summarized below. Any change in these facts or the introduction of new facts may lead to a different result.

The *Code of Virginia* sections, regulations and public documents cited are available on-line at [www.tax.virginia.gov](http://www.tax.virginia.gov) in the Laws, Rules and Decisions section of the Department's web site.

## FACTS

The Taxpayer is a nonprofit organization exempt from federal income taxation under Internal Revenue Code (IRC) § 501(c)(3). The Taxpayer's primary business activity is providing research services for the federal government. The Taxpayer receives fees for performing its services, and federal grants provide an additional source of funding. In addition, the Taxpayer states that it has no unrelated business taxable income (UBTI).

The Taxpayer requests a ruling as to whether it qualifies for the BPOL tax exemption permitted for gross receipts of certain charitable nonprofit organizations. If the Department determines that it does not qualify for a nonprofit exemption, the Taxpayer also asks whether receipts derived from the performance of services would be taxed differently than grant funds and whether receipts attributable to

economic or social sciences research would be taxed at the rate applicable to such services under *Va. Code* § 58.1-3706(D)(1).

### OPINION

The BPOL tax is based on a taxpayer's gross receipts, which are defined in *Va. Code* § 58.1-3700.1 as "the whole entire total receipts, without deduction." *Virginia Code* § 58.1-3703 C 18 a, however, prohibits localities from imposing a BPOL tax on a charitable nonprofit organization unless the organization has receipts from an unrelated trade or business. Under the statute, a "charitable nonprofit organization" is:

an organization which is described in Internal Revenue Code § 501(c)(3) and to which contributions are deductible by the contributor under Internal Revenue Code § 170, except that educational institutions shall be limited to schools, colleges and other similar institutions of learning.

IRC § 501(c)(3) defines charitable nonprofit organization as:

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual . . .

Under Title 23 of the Virginia Administrative Code (VAC) 10-500-10 and 10-50040 A 11, the determination as to whether or not an organization is eligible for this exemption for BPOL taxation purposes is based solely by reference to the relevant provisions of the IRC. See also Public Document (P.D.) 01-104 (8/15/2001) and P.D. 08-12 (1/11/2008). If an organization meets these requirements, it is exempt from the imposition of a license fee or gross receipts tax unless it has UBTI. An otherwise exempt charitable nonprofit organization may be subject to BPOL tax on receipts resulting from UBTI as determined under IRC § 511, *et seq.* See P.D. 97-192 (4/21/1997) for a discussion of UBTI.

The Taxpayer indicates that it has been certified by the IRS as a nonprofit organization described in IRC § 501(c)(3). Accordingly, the Taxpayer would qualify for the exemption from BPOL tax for charitable nonprofit organizations under *Va. Code* § 58.1-3703 C 18 a. In addition, the Taxpayer states that it does not generate any UBTI. As such, the Taxpayer's gross receipts would be exempt from the BPOL tax entirely. The Taxpayer should be aware, however, that if it engages in activities in the future that result in UBTI, it would be required to obtain a license and pay the BPOL tax in the appropriate locality.

Because the Taxpayer is a charitable nonprofit organization exempt from the BPOL

tax under *Va. Code* § 58.1-3703 C 18 a, there is no need for the Department to opine on the additional questions raised. If you have any questions regarding this opinion, you may contact \*\*\*\*\* in the Office of Tax Policy, Appeals and Rulings, at \*\*\*\*\*.

Sincerely,

Craig M. Burns  
Tax Commissioner

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