Contractors Panel Discussion

Virginia Association of Local Tax Auditors

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Henrico County, VA

Paul Crepeau

City of Suffolk

Paul Berkley

Chesterfield County

CONTRACTORS Discussion

SITUS OF GROSS RECEIPTS, LICENSE CLASSIFICATION ISSUES , and

HOW DO YOU TAX OUT-OF-TOWN CONTRACTORS?

WHAT IS A CONTRACTOR ?

- *"Contractors" mean any person, that for a fixed price, commission, fee, or percentage undertakes to bid upon or accepts, or offers to accept, orders or contracts for performing, managing, or superintending in whole or in part, the construction, removal, repair or improvement of any building or structure permanently annexed to real property owned, controlled, or leased by another person or any other improvements to such real property.*
- Virginia Board of Contractors, Code of Virginia §54.1 Chapter 11

WHAT IS A CONTRACTOR ?

- **Accepts to perform, regularly performs, or engages others to perform, any of the work described in § 58.1-3714 (using building materials) on buildings, structures or real estate owned by him when the buildings, structures or real estate are sold upon completion of such work.**

CONTRACTORS CANNOT BE

- **A person acting as their own prime contractor to build or improve a building that they intend to occupy**

- **A person who sells a prefabricated building or structure**

CONTRACTORS CAN BE

- **Seller of prefab buildings who subcontract to erect a structure**
  - **WHY? Because they control the construction**
- **Persons who subdivide and improve real estate**
- **Speculative builders who intend to offer the subdivided lots or completed buildings for sale**

CONTRACTORS CAN BE

- **A speculative builder who temporarily leases real estate until it can be sold**
- **Persons or companies having a Class A or B contractors license issued by the Virginia Board of Contractors may be contractors**
- **An individual who ‘flips’ houses**

CONTRACTORS CAN BE

- **A person who installs water or sewer systems, roads, or any other activity described in subsection B of § 58.1-3714 <u>on his own land</u> with the intent to offer the land for sale**

INSTALLATION BY MERCHANT

- **A merchant, who delivers and installs merchandise he sells when the installation uses existing openings and connections, is not considered a contractor**
- **Installation requiring making openings in a wall, running ductwork, wiring or plumbing, or similar other work may be deemed contracting**

BPOL LICENSE OR FEE RATES

- Any business with gross receipts of more than $100,000, or $50,000, as applicable, may be subject to the tax at a rate not to exceed the rate set forth below for the classifications listed:
  - **For contracting, and persons constructing for their own account for sale, sixteen cents per $100 ($1.60/$1,000) of gross receipts**

SITUS OF GROSS RECEIPTS

- **Situs refers to the locality in which those subject to local BPOL taxation have a definite place of business, except as otherwise provided by law.**

- **If they have a definite place of business in any other locality, then that other locality may impose a BPOL tax.**

SITUS OF GROSS RECEIPTS

- **If the business establishes a definite place of business and generates receipts greater than $25,000 and the locality does not impose a BPOL tax, those receipts are not taxable.**

- **And those untaxed gross receipts arising from a definite place of business in one locality may not be attributed to another locality.**

SITUS OF GROSS RECEIPTS

- **A key element is applying the rules of a definite place of business and/or having worked at a location for 30 days or more.**

SITUS OF GROSS RECEIPTS

- **Where a contractor has a definite place of business at an out-of-state location, then the gross receipts arising from activities at that out-of-state location would not be attributed back to the principal locality in VA.**

SITUS OF GROSS RECEIPTS

- **Where a contractor does not have a definite place of business (less than 30 days) at an out-of-state location, and those workers' activities were controlled from the principal locality in VA, then the gross receipts arising from activities at that out-of-state location may be attributed back to the principal locality in VA providing there is no income tax based tax imposed by the other state.**

SITUS OF GROSS RECEIPTS

- **A BPOL tax based on gross receipts includes only those receipts attributed to the exercise of a licensable privilege at a definite place of business within Virginia.**

- **Where activities are conducted outside of a definite place of business, gross receipts are attributed to the definite place of business from which such activities are initiated, directed, or controlled.**

SITUS OF GROSS RECEIPTS FOR CONTRACTORS

- **Generally, the gross receipts are attributed to the definite place of business where its services are performed**

- **If services are performed where there is no definite place of business, then they are attributed where its services are initiated, controlled or directed**

Gross Receipts for Contractors

- **Unless the contractor is subject to State Code §58.1-3715**
  - If gross receipts derived from the locality in which the contractor does not maintain a definite place of business do not exceed $25,000, **then those receipts are attributable to the locality in which the contractor's definite place of business is located.**

State Code Sec. 58.1-3715

When the amount of business done by a contractor in any other county, city or town exceeds the sum of $25,000 in any year, such other county, city or town may require of such contractor a local license, and the amount of business done in such other county, city or town in which a license tax is paid may be deducted by the contractor from the gross revenue reported to the county, city or town in which the principal office or any branch office of the contractor is located.

OTHER FACTORS TO CONSIDER

- **Is the installation merely ancillary to the retail sales of a merchant**
- **Does the merchant hold himself out as able to perform contractor's activities?**
- **Does the merchant install only his own merchandise or does he also install the goods of others?**

BPOL TAXATION

- **IN-TOWN CONTRACTORS - Treat them like any other local business;**
  - **Based on prior year's gross receipts.**

- **OUT-OF-TOWN CONTRACTORS – Apply VA Code 58.1-3715. If gross receipts are less than $25,000, no tax and no fee.**

OUT-OF-TOWN CONTRACTORS

- **Do you allow for deductions reported to other localities?**
  - **If they reported over $100,000 to another locality, then you contact the locality for verification and allow the deduction.**
  - **Why?**
    - **Because they paid a tax to the other locality.**
  - **But what do you do when the gross receipts is over $25,000 but less than $100,001**

OUT-OF-TOWN CONTRACTORS

- Do you allow a deduction for receipts generated in another locality?
  - Many do.
  - Some do not.
  - Where do you fall?
  - What are the pitfalls?

WHAT ABOUT OUT-OF-STATE CONTRACTORS

- **Does your locality treat them differently than out-of-town contractors?**