TAX Commissioner's Rulings and other relevant cases

VALTA

Presented by: Karen Bever- City of Hampton

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BEAR ISLAND WB LLC V. COUNTY OF HANOVER

- Section 58.1-3507(B) authorizes the assessment of M&T by means of "depreciated cost or a percentage or percentages of original total capitalized cost…".
- The issue in this case was whether the phrase "original total capitalized cost" means the original cost of the machinery and tools when they were first purchased from the manufacturer or dealer or the cost paid by the current owner whenever and under whatever circumstances it first acquired the property. Obviously, if the current owner is the original purchaser, then the interpretation makes no difference in the assessed value of the equipment. However, if the plant and its equipment were purchased after many years of operation in a bankruptcy sale (as in this case), then the difference in dramatic. In this case, where the assessment of equipment with an original cost of hundreds of millions of dollars was at issue, the difference in interpretations amounted to over $700,000 per year in tax revenue.
- There are two State Tax Commissioner and two Attorney General opinions which support Hanover's position that original cost means what the equipment cost when it was purchased for the first time. The Circuit Court agreed on Hanover's Motion for Summary Judgment, and the Supreme Court rejected the appeal.

17-81: BPOL-JUNE 1 2017

- **Taxpayer filed BL Return**
- **Taxpayer later filed for refund request per §58.1-3980 based on out-of-state deductions**
- **City agreed taxpayer should get refund but disagreed with calculations and issued a smaller refund**
- **Taxpayer appealed to TAX**

Ruling

- An appealable event is:
  - An increase in the assessment of a license tax
  - The denial of a refund
  - The assessment of a local license tax where none previously was assessed.
- City's denial of the refund was appealable event.
- Taxpayer did not file an appeal with the city and the city did not issue a final decision.
- Therefore the Taxpayer cannot appeal the denial of the refund to the Tax Commissioner
- TAX does not have jurisdiction.

17-93: BPOL JUNE 9 2017

- Taxpayer claims they did not situs gross receipts properly for out of state deduction
- City requested a breakdown of receipts for the situs it was claiming a deduction
- Taxpayer appeals on the grounds that only required to situs gross receipts to out of state location in which it filed an income tax return

- <u>RULING</u>
- Gross receipts reported on another state's income tax return will almost never equal the amount of gross receipts sitused to definite place of business for BPOL
- Taxpayer need only show that gross receipts are included in gross income or federal taxable income reported on state return

17-94 BPOL: JUNE 9 2017

- Hampton audit case
- Taxpayer appealed the audit assessment involving gross receipts
- Taxpayer claims that gross receipts from internet access are not subject to BPOL pursuant to the Internet Tax Freedom Act(IFTA)

<u>RULING</u>

City’s BPOL tax should be considered a tax on internet access under the federal IFTA.

City’s BPOL Tax was grandfathered

Currently under reconsideration upon taxpayer request

17-95: BPOL-JUNE 9 2017

- Taxpayer began doing business in 2014 and closed in 2016.
- Taxpayer estimated 2015 gross receipts because it had not completed a full tax year. Actual gross receipts for 2015 were greater than the estimate.
- County issued an assessment for additional BPOL tax due. County also assessed the Taxpayer for BPOL for 2016 based on 2015 gross receipts.
- Taxpayer contends use of the same gross receipts tax base for both 2015 and 2016 tax years constitutes double taxation.

Ruling:

- "Double Taxation" is defined as "the imposition of two taxes on the same property during the same period and for the same taxing purposes."
- Because the gross receipts tax base occurs over different tax periods, double taxation does not occur.
- Legislation in 2015 allows a taxpayer anticipating closing the next year to estimate the final year's gross receipts.
- At closing of the business, the locality will either refund or assess the difference in actual gross receipts vs the estimate.
- If the taxpayer does not inform the locality, then the license for the final year is prorated using the previous year's gross receipts adjusted by the number of months the business was open.
- The County assessment was upheld.

17-113: BPOL-JUNE 26 2017

- Taxpayer with a definite place of business in the County grew produce in various locations throughout the USA and Canada.
- Produce was processed at packing plant in County then produce was sold to distributors.
- County classified Taxpayer as wholesaler because packaging produce constituted a separate business.
- Taxpayer appealed contending it was exempt from BPOL tax because it grew the produce.

Ruling:

- Because the Taxpayer grew the products it sold out of its facility in the County, the Taxpayer was exempt from the County's license fee and tax under Va. Code § 58.1-3703 C 2.
- Had taxpayer packaged products for other growers and selling them then could have been licensed
- County is instructed to abate and refund any payments by the Taxpayer.

17-128: M&T-JUNE 29 2017

- Taxpayer operates a magazine printing facility.
- Taxpayer filed amended returns for 2010-2012 removing equipment not used in the manufacturing process and requested refunds.
- City conducted an audit and exempted a portion of the items requested to be exempt.
- Taxpayer also asserted the City should use the acquisition costs rather than original costs in their appeal to TAX.

Ruling:

- Coating and engraving the cylinders prior to printing was not directly involved in the manufacturing process.
- Enclosures, walking surfaces and handrails used to facilitate the movement of people who work in the facility were not directly involved in the manufacturing process.
- Those items were not taxable.
- Printers used in the bindery process, machine guards and splash guards were considered part of the manufacturing process and taxable.
- The City was instructed to adjust the assessment.
- Because the valuation issue was not raised in the local appeal and it was not addressed by the City in the final determination letter,
- TAX did not have jurisdiction and did not issue a final determination on the valuation issue.

17-137: BPOL JULY 20 2017

- Taxpayer filed an amended BPOL return for 2013-2015 requesting refunds.
- County denied refunds and instructed Taxpayer to file an appeal with the County if it disagreed.
- Taxpayer appeals the denial of the refunds to the Department.

Ruling:

- TAX does not have jurisdiction since the County has not issued a final determination.
- Once the County issues a final determination, the taxpayer may appeal directly to the TAX Commissioner.
- Taxpayer may also appeal to TAX if its local appeal is pending with the County for more than one year, provided the Taxpayer gives the County 30 days written notice that it is electing to treat the appeal as denied.

17-142: TANGIBLE PERSONAL PROPERTY AUGUST 7 2017

- Taxpayer assessed taxes on a motor vehicle for 2015 and 2016.
- Tax Department withheld a portion of taxpayer's 2015 income tax refund for debt owed to the County.
- Locality issued another bill for the vehicle license fee and unpaid taxes.
- Taxpayer appealed requesting the Department cancel all debt owed to the County on the basis that the County, DMV failed to prove how withheld funds were applied to the personal property taxes.

Ruling:

- *Code of Virginia* 58.1-525 requires the locality to notify taxpayers within 10 days of the impending debt setoff in order for taxpayers to appeal the collection effort.
- Because this was not a business tax, local mobile property tax or local BPOL tax, the Tax Department has no jurisdiction over the matter.
- Taxpayer was directed to contact the local official for explanation about how the setoff and any other payments were applied to the account.

17-159:BPOL SEPTEMBER 8 2017

- Taxpayer filed amended returns for BPOL using payroll apportionment and the out of state deduction
- County agreed with the payroll apportionment but not the out of state deduction
- Taxpayer appealed stating the out of state deduction was correct because it requires employees participate with other employees in other states

- RULING
- Analyze three requirements for deduction: BPOL receipts, receipts attributable to another state, and file an income tax return
- Participation with employees in other offices can be an attribute that qualifies taxpayer for deduction it must be strictly interpreted with the deduction. The deduction is for gross receipts a taxpayer must have received revenue from an out of state jurisdiction which generally would require a customer to be located in that out of state deduction

17-177: Business Tangible Personal Property September 25, 2017

- Taxpayer appealed to the county contending the value of racking system should be reduced because it was not fully operational
- County denied and the taxpayer appealed to TAX. The appeal was based on the FMV of equipment that was not fully utilized be reduced by economic obsolescence.

Ruling

Economic obsolescence is not enough to justify FMV

Taxpayer needs to submit a bona fide independent appraisal to demonstrate FMV

§ 58.1-3 Secrecy of Information

Carroll County

1. Commissioner investigated in spring 2017.
2. August – charged with 3 felonies:

   "The charges stem from the illegal accessing of protected information from a state government database and then disseminating that protected information to another individual," the state police press release states. "Zimmerman turned herself in to the Virginia State Police on Thursday and was released on bond. The Virginia State Police investigation, which remains ongoing at this time, was initiated in April 2017."

3. Court date is December 2017.
4. If Convicted, Commissioner is removed from office.

City of Radford

1. ABC agent produces subpoena for meals tax information.
2. Commissioner refused to provide information without “proper judicial order”.
3. ABC agent indicated the individual who signed the subpoena was a judge.
4. ABC agent threatened to file criminal charges against the Commissioner.
5. Assistant City Attorney advised Commissioner to provide the information.
6. Commissioner contacted Risk Management which upheld the Commissioner’s refusal to produce the information.

Isle of Wight

1. Sheriff's Department has on-going criminal investigation.
2. Investigator asks Chief Deputy Treasurer what equipment is being taxed.
3. Chief Deputy Treasurer approached Business Equipment Deputy COR for a copy of the listing.
4. COR Deputy refused to provide.
5. Commissioner has advised Sheriff to educate Deputies of the proper procedure to obtain the information using a "proper judicial order".


That's All Folks