



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of December 08, 2012**

DATE: November 28, 2012

SUBJECT: Request to advertise a public hearing to consider a proposed amendment to Arlington County Code, Chapter 11 (Licenses), Article I (Administration and Collection) and Article III (Gross Receipts Business Tax) which would exempt certain gross receipts and simultaneously adjust the business license tax rate for advertising agents or firms.

C. M. RECOMMENDATION:

Authorize the advertisement of a January 26, 2013 public hearing to consider proposed amendments, as shown on Attachment A, to Chapter 11 (Licenses), Article I (Administration and Collection) and Article III (Gross Receipts Business Tax) of the Code of Arlington County, Virginia, to exempt certain gross receipts from the calculation of Business Professional License tax and simultaneously increase the business tax rate charged for advertising agents or firms.

ISSUES: This a request to advertise changes to Arlington's BPOL tax code to remove media buy receipts from the tax calculation, which are essentially a pass-through for advertising agencies for the purchase of media space for their clients, and to increase the rate at which the remaining gross receipts are taxed.

SUMMARY: The County modified Chapter 11 (Licenses), Article I (Administration and Collection) and Article III (Gross Receipts Business Tax) of the Code of Arlington County, Virginia in 2004 to address issues related to the County's inclusion of the media buy receipts of advertising agencies in the calculation of their gross receipts business tax. This change was made to increase Arlington's competitiveness in the Metropolitan area for small and medium sized advertising agencies. After several years, the County has not been able to increase the number of advertising agencies located in Arlington. And in addition, the County is in jeopardy of losing existing businesses due to the current Business, Professional and Occupational License (BPOL) tax structure. Changes to Arlington's BPOL tax code are being proposed to remove media buy receipts from the tax calculation, which are essentially a pass-through for advertising

County Manager:

BMD/mjs

County Attorney:

[Signature] *[Signature]*

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Staff: Jennifer Ives, Arlington Economic Development
Colleen Donnelly, Department of Management and Finance

agencies for the purchase of media space for their clients, and to increase the rate at which the remaining gross receipts are taxed.

BACKGROUND: In 2003, the County was taxing companies which had media buy money at a rate of \$.36/\$100 of gross receipts. Following extensive research and discussion, staff recommended that the County adjust the local ordinance to reduce the BPOL tax rate for media buy money to \$.20/\$100 of gross receipts for advertising agencies in which 50 percent or more of their taxable gross receipts revenue was for media buys on behalf of unaffiliated customers/clients. The County Board adopted this BPOL tax rate changes on April 24, 2004. Currently, only two advertising companies qualify for the lower BPOL rate established in 2004, and there are fewer advertising agencies in the County than there were in FY 2004.

DISCUSSION: Media purchases on behalf of a third party are statutorily exempt from BPOL tax in Fairfax County. Consequently, eight of the top 20 creative advertising agencies in the Washington D.C. metropolitan area are located in Fairfax County. There is no evidence to prove that companies have left Arlington for the tax advantage alone. However, several large and well-respected advertising agencies have shared with County staff that they will not consider a move to Arlington County because of its current tax structure.

While Arlington County is an attractive location for creative workers and residents, the County is not on a level playing field when competing for advertising agencies within the region. The District of Columbia and Montgomery County do not levy BPOL tax. Fairfax County exempts media buys from gross receipts. When advertising agencies consider their options, Arlington's tax structure puts the County at a severe disadvantage to other localities because of the burden on business license tax. In fact, once a company attains a certain critical mass, the BPOL tax liability can become one of the single largest expenses for an organization. In addition, these companies may see more affordable lease rate options in neighboring jurisdiction as a compelling factor to locate their business elsewhere.

Arlington County needs to remain competitive in the new economy. In the ever evolving economic landscape for Arlington, where the Federal government is no longer in the market for large blocks of office space and tenants (both public and private) seek to lower their office space utilization, the County's long-term success will depend on establishing, attracting, and retaining creative, high growth companies. This is more easily accomplished if Arlington is perceived as a place where creative businesses, like advertising agencies, can flourish.

FISCAL IMPACT: If the Board adopts the proposed Code changes, there will be a decline in the FY 2013 BPOL tax receipts received from advertising agencies of approximately \$200,000. However, whether BPOL tax receipts in the aggregate are above or below budgeted amounts (\$63 million) will not be known until April 2013. Staff routinely reviews BPOL tax revenues as a part of the 3rd Quarter Financial Report. At that time, if BPOL tax receipts are trending below or above budgeted amounts, an adjustment will be made as part of the FY 2013 3rd Quarter review.

Attachment A

AN ORDINANCE TO AMEND, REENACT, AND RECODIFY CHAPTER 11 (LICENSES) OF THE ARLINGTON COUNTY CODE RELATING TO A EXEMPTION OF BUSINESS RECEIPTS AND AN INCREASE IN THE BUSINESS LICENSE TAX RATE FOR ADVERTISING AGENTS OR FIRMS, EFFECTIVE JANUARY 1, 2013.

- I. BE IT ORDAINED by the County Board of Arlington County, Virginia, that Chapter 11, Article I and Article III, of the Arlington County Code is amended, reenacted, and recodified as follows, effective January 1, 2013:

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ARTICLE I

ADMINISTRATION AND COLLECTION

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§ 11-3. Limitations on Gross Receipts Subject to Business License Taxation.

Gross receipts include gross receipts from all sales made or services rendered or business activities conducted from a definite place of business in the County, both to persons within the County and to persons outside the County as set out in § 11-16 of this chapter. However, the following limitations apply:

* * *

C. Gross receipts do not include receipts received by advertising agencies from customers which are subsequently paid by advertising agencies on behalf of those customers to non-affiliated third parties for: (a) advertising space or time in any media including print, TV, radio, online, mobile and direct mail; (b) content placement including events, sponsorships, exhibits, marketing collateral, brochures, slide presentations, and white papers; or (c) production or fulfillment costs directly associated with such advertising activities listed in (a) and (b) including electrical transcription, ad serving, exhibit software and hardware, pressing, art work, engraving, plate, mats, printing stock and postage.

* * *

ARTICLE III.

GROSS RECEIPTS BUSINESS TAX

§ 11-57. Professional and Specialized Occupations.

Professional and specialized occupations. Every person engaging in any of the following

professional or specialized occupations shall pay an annual tax of thirty-six cents (\$0.36) for each one hundred dollars (\$100.00) of gross receipts from the business during the preceding calendar year, ~~except as provided in subsection D below.~~

~~———— D. ——— The gross receipts of advertising agencies or firms shall be taxed at twenty cents (\$.20) for each one hundred dollars (\$100.00) of gross receipts if fifty percent (50%) or more of that agency's or firm's gross receipts during the previous calendar year were used to buy media space for unaffiliated client(s).~~

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- II. The remaining sections and subsections of Chapter 11 of the Code of Arlington County, Virginia, not amended hereby shall remain in effect as previously enacted.