

BPOL EXCLUSION WORKSHEET INSTRUCTIONS

FOR USE WITH THE FAIRFAX COUNTY BUSINESS LICENSE APPLICATIONS

General Information:

Exclusions are deductions from a company's gross receipts that are allowed by the *Fairfax County Business, Professional, and Occupational License (BPOL) Ordinance*. Sections 4-7.2-1 (b)(1) (A) - (Z) of the *Fairfax County Code* and §58.1-3732 through §58.1-3734.1 of the *Code of Virginia* list the only deductions that may be claimed on the Fairfax County BPOL filing.

Documentation is required to be supplied for ALL exclusions your company is claiming. Listed below are the requested items that must be filed with your BPOL application and Exclusion Worksheet. Documentation must be submitted on a calendar year basis (January through December). If a company is on a fiscal year basis ending other than December 31st, please indicate fiscal year end date and provide sufficient information to convert receipts/expenses to the calendar year. Based upon a review of the materials submitted, the County may require additional information before any deduction is allowed. Failure to provide the necessary documentation may result in denial of the claimed exclusion(s).

Each exclusion on the Exclusion Worksheet refers to the numerated instructions (I - IX) below which identify the necessary work papers, financial statements, invoices, contracts, licenses, etc., required to document your exclusion. A request for financial statements would include, but is not limited to, year-end reports commonly known as trial balances, general ledgers, income & expense reports, profit & loss statements, etc. Any financial statement submitted in support of a BPOL application must identify both the annual gross receipts of the business, as well as the receipts and/or expenses being excluded. Since BPOL is based upon the gross receipts of the proceeding calendar year, so should all documentation supporting the exclusion. Please remove/redact any personal, proprietary, confidential, or otherwise sensitive information (personal names, SSN, etc.) from all materials prior to submission to this office.

Sections I - X Documentation Required:

I. Gross receipts attributable to taxable business activity in another Virginia jurisdiction, state, or foreign country [4-7.2-1(b)(1)(B) or 4-7.2-1(b)(1)(D)]:

- 1) Federal & Virginia Income tax filing.
- 2) State income tax and/or local business license tax returns; include each state tax filing's apportionment schedule.
- 3) List of gross receipts by jurisdiction or state.
- 4) Detailed year-end financial statements that identify total gross receipts reported on the BPOL application.

II. Virginia retail sales and use tax or federal and state excise tax on motor vehicle fuel [4-7.2-1(b)(1)F]:

This exclusion can only be claimed if the sales and use tax collected has been included in your total gross receipts or if the excise tax collected on motor vehicle fuel has been included in your total gross receipts.

- 1) Account number as assigned by the State.
- 2) Copies of the monthly or quarterly sales and use tax or excise tax filing(s). For excise tax exclusion, provide the number of gallons sold and total gas sales.
- 3) Detailed year-end financial statements that identify the total gross receipts reported on the BPOL application.
- 4) Provide calculation/work papers used to arrive at exclusion amount.

III. Resellers of hardware and software to a federal or state government entity [4-7.2-1(b)(1)G]:

To qualify for this exemption, the law requires that the purchaser be contractually obligated to resell such property at the time the purchaser acquired it.

- 1) Detailed listing designating the government agency purchasing the equipment, the contract number, detailed description of the Computer hardware/software, date equipment purchased, cost, sales price, and date sold.
- 2) Copies of the section(s) of the contract, which specify the names of the parties to the contract, the date the contract commenced, and the Statement of Work (SOW).
- 3) Copies of invoices of property purchased for resale and copies of corresponding sales invoices to the government agency.
- 4) Brief description of the nature of your business or your company's web site address.

IV. Membership dues and/or donations collected by nonprofit trade, business, professional, service or civic associations, or other similar nonprofit organizations. [4-7.2-1(b)(1)L or 4-7.2-1(b)(1)R]:

The exclusion of membership dues or donations is limited to nonprofit organizations which collect and record such receipts as income related to their business operations on their Federal Form 990. This exclusion does not apply to businesses which pay membership dues or make charitable contributions to nonprofit organizations.

- 1) Copy of most recently filed Federal Form 990 (Return of Organization Exempt from Income Tax)
- 2) Copy of most recently filed Federal Form 990T (Exempt Organization Business Income Tax Return)
- 3) Detailed year-end financial statements that identify total gross receipts reported on the BPOL application. .
- 4) Description of your organization

V. 501(c)(6) or 501(c)(3) organizations [4-7.2-1(b)(1)N or 4-7.2-1(b)(1)O]:

Fairfax County Code states that gross receipts do not include the income of a charitable nonprofit organization except to the extent an organization has receipts from an unrelated trade or business income which is taxable under Internal Revenue Code Section 511 et seq.

- 1) Copy of most recently filed Federal Form 990 (Return of Organization Exempt from Income Tax)
- 2) Copy of most recently filed Federal Form 990T (Exempt Organization Business Income Tax Return)
- 3) Detailed year-end financial statements that identify total gross receipts reported on the BPOL application. Please mark revenue line items classified as unrelated to the organization's business activities
- 4) Description of your organization

VI. Software developers [4-7.2-1(b)(1)Z]:

The software product(s) must be developed at a definite place of business in Fairfax County. Qualified developers originate and retain the ownership rights (intellectual/propriety) of the developed software to include the exclusive right to license, sell, or lease the software. Receipts derived from computer related activities such as systems analysis, systems integration, and/or training on the software are not part of this exclusion. Receipts attributed to maintenance contracts may be excluded if maintenance includes automatic updates, fixes, and upgrades to qualifying software products. Software development activities conducted on behalf of another party are not eligible for this exclusion.

- 1) A listing of the Fairfax County locations where the software is designed, developed, or created.
- 2) Description of any all business activities conducted or controlled from the Fairfax County site.
- 3) Copies of the licenses or contracts detailing the lease, license, or sale of the software product developed.
- 4) Detailed financial statements that identify both the company's total gross receipts and those receipts directly attributed to the lease, sale, or license of its software as claim on the exclusion worksheet.
- 5) Brief description of the nature of your business. If your company has a web site, please provide the web page address.
- 6) List of software products developed. Please provide copies of promotional literature for each product.

VII. Contractors [4-7.2-24]:

This applies only to contractors with a principal office located in Fairfax County

Contractors as defined by Code of Virginia §58.1-3714 as businesses that accept contracts for work on or in any building or structure that requires the use of paint, stone, brick, mortar, steel, wood or other similar construction material, paving, excavating, plumbing, painting, wiring, etc. Contractors whose license requirements are defined by Code of Virginia §58.1-3715 with a principal office location in Fairfax County may deduct from their gross receipts all work done in another licensing jurisdiction in which a similar tax is paid, and where the amount of business done by the contractor has exceeded the sum of \$25,000 for the same license year.

- 1) Listing of gross receipts by jurisdiction.
- 2) Copies of BPOL filings, showing gross receipts reported to other jurisdiction.
- 3) Detailed year-end financial statements that identify total gross receipts reported on the BPOL application.
- 4) Must provide State license # and expiration date.

VIII. Limitation of Gross Receipts; Real Estate Brokers [§58.1-3732.2]

Pursuant to Chapter 4, Article 7.2 of the Fairfax County Code, Real estate brokers must report all receipts on their BPOL filing as individual real estate agents are not licensed separately in Fairfax County. In accordance with the State Code §58.1-3732.2, if by contract a real estate agent receives the full commission attributed to their sales, less an adjustment for the business license fee paid by the broker on the agent's behalf, the broker may exclude from gross receipts the desk fees, apportioned business license tax, and other overhead costs reimbursed/received from the agents.

- 1) Detail year-end financial statements that identify the total gross receipts on the BPOL application as well as the real estate agent desk fees, business license reimbursements, and other overhead costs paid by the agents to the broker as claimed for exclusion.
- 2) Copies of contracts with the real estate agent, which identify that the agent receives full commission and outlines which fees they paid.

IX. Limitation on Gross Receipts; Staffing Firms [§58.1-3732.4]

Gross receipts for license tax purposes shall not include employee salary and benefits paid by a staffing firm to, or for the benefit of, any contract employee for the period of time that the contract employee is actually employed for the use of the client company pursuant to the terms of a PEO services contract or temporary help services contract. Payments made or income received under a subcontract agreement and/or amounts reported on a Federal Form 1099 (income other than wages, salaries, or tips) do not qualify for the staffing firm exclusion. (Department of Taxation Guidelines §2.12)

- 1) Copies of at least three contracts that your company executed with a client. The contracts should be complete and should identify the business activities/employment responsibilities between the two contracted parties and should be applicable to the BPOL tax year filed in which a staffing exclusion is being claimed. Please include a Statement of Work (SOW) or other related work orders.
- 2) A list of the top five clients or clients that comprise 80% of the gross receipts filed for the related tax year and for which you are claiming a staffing exclusion.
- 3) Detailed year-end financial statements that identify the total gross receipts reported on the BPOL application and which also identify the employee deductions (direct payroll, benefits) claimed by the exclusion.
- 4) Copy of the federal tax return for the related calendar year.

X. All Other Exclusions:

- 1) Identify by either Virginia State Code reference or Fairfax County Ordinance section the exclusion that is claimed by your business.
- 2) Documentation which clearly demonstrates the basis of the exclusion, such as work papers and detailed financial statements, contracts, invoices, etc.,
- 3) Brief description of the nature of business in which your company is engaged.
- 4) Any other documentation supporting your exclusion
- 5) Federal & Virginia Income tax filing.

EXCERPTS FROM *FAIRFAX COUNTY BPOL ORDINANCE*

Section 4-7.2-1 (b) (1) (A) - (Z) and 4-7.2-24

Section 4-7.2-1. Definitions and requirements.

- (b) Special definitions, exclusions and provisions. The general definitions provided by this

Article shall be subject to the following limitations, unless a different meaning clearly is required by the context:

- (1) Exclusions from the definition of gross receipts:

- (A) Gross receipts do not include those receipts excluded by Virginia law pursuant to Code of Virginia Section 58.1-3703(C).
- (B) Gross receipts do not include revenues that are attributable to taxable business activity conducted in another jurisdiction within the Commonwealth of Virginia and the volume attributable to that business activity is deductible pursuant to Code of Virginia Sections 58.1-3708 and 58.1-3709.
- (C) Pursuant to Code of Virginia Section 58.1-3732, gross receipts do not include those amounts not derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business.
- (D) Gross receipts do not include revenues that are attributable to business activity with a taxable situs in another jurisdiction not within the Commonwealth of Virginia which shall include any amount attributable to business conducted in another state or foreign country in which the taxpayer is liable for an income or other tax based upon income.
- (E) Gross receipts do not include those receipts which are subject to a license tax on the same business activity imposed by a town government in accordance with Code of Virginia Section 58.1 -3711.
- (F) Gross receipts do not include any amounts received and paid to the United States, the Commonwealth or any county, city or town for the Virginia retail sales or use tax, for any local sales tax or any local excise tax on cigarettes, for any federal or state excise taxes on motor fuels.
- (G) Gross receipts do not include any amount paid for computer hardware and software that are sold to a United States federal or state government entity provided that such property was purchased within two years of the sale to said entity by the original purchaser who shall have been contractually obligated at the time of purchase to resell such property to a state or federal government entity. This deduction shall not occur until the time of resale and shall apply to only the original cost of the property and not to its resale price and the deduction shall not apply to any of the tangible personal property which was the subject of the original resale contract if it is not resold to a state or federal government entity in accordance with the original contract obligation.
- (H) Gross receipts do not include licenses, admission taxes or pari-mutual wagering pools established under Code of Virginia Sections 59.1-392 or 59.1-393 in accordance with the provisions of Code of Virginia Section 58.1-3732.1.
- (I) Gross receipts do not include any amounts received by a real estate broker which arise from real estate sales transactions to the extent that such amounts are paid to a real estate agent as a commission and the agent is subject to a business license tax on such gross receipts in accordance with the provisions of Code of Virginia Section 58.1-3732.2. Real estate brokers must include all such receipts within their taxable gross as individual real estate agents are not licensed separately under Chapter 4, Article 7.2 of the Fairfax County Code. In addition, gross receipts, when used in connection with Section 4-7.2-34 of this Article, means all commissions received by real estate brokers with respect to the purchase, sale or purchase and sale of any real estate and the management fees paid by real estate agents to real estate brokers as established in accord with a contractual agreement between the broker and the agents of that broker. After December 31, 1995, gross receipts, when used in connection with Section 4-7.2-34 of this Article, do not include management fees paid by real estate agents to real estate brokers as established in accord with a contractual agreement between the broker and the agents of that broker. Such receipts are taxable in accordance with Section 4-7.2-23 of this Article.
- (J) Gross receipts do not include the value of any trade-in vehicle accepted in trade by a motor vehicle dealer who accepts a trade-in as part of a sale of a motor vehicle pursuant to Code of Virginia Section 58.1-3734.1.

- (K) Gross receipts do not include all amounts received in the course of conducting the state lottery by a lottery sales agent licensed by the State Lottery Board, but gross receipts do include the compensation actually paid to a lottery sales agent in accordance with the provisions of Code of Virginia Section 58.1-4011.
- (L) Gross receipts do not include membership dues collected by trade, business, professional, service or civic associations, or other similar nonprofit organizations.
- (M) Gross receipts do not include amounts paid by advertising agents and agencies for any customer for advertising space, radio time, television time, electrical transcription, pressing, art work, engraving, plate, mats, printing stock and postage.
- (N) Gross receipts do not include income which is exempt from the federal income tax pursuant to § 501(c) (6) of the United States Internal Revenue Code, as amended. However, this exclusion pertaining to organizations which are exempt from the federal income tax pursuant to § 501(c)(6) of the United States Internal Revenue Code does not exempt unrelated business income received by those organizations which is taxable pursuant to § 501(b) of the United States Internal Revenue Code, as amended.
- (O) Gross receipts do not include:
 - (i) the income of a charitable nonprofit organization except to the extent an organization has receipts from an unrelated trade or business the income of which is taxable under Internal Revenue Code § 511 et seq. For the purpose of this subsection, "charitable nonprofit organization" means 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.
 - (ii) On or measured by gifts, contributions, and membership dues of a nonprofit organization. Activities conducted for consideration which are similar to activities conducted for consideration by for-profit businesses shall be presumed to be activities that are part of a business subject to licensure. For the purpose of this subsection, "nonprofit organization" means an organization exempt from federal income tax under Internal Revenue Code § 501, other than charitable nonprofit organizations.
- (P) Gross receipts do not include receipts which are the proceeds of a loan transaction in which the licensee is the obligator, or the return of principal of a loan transaction in which the licensee is the creditor. Gross receipts also do not include the return of principal or basis upon the sale of a capital asset. Gross receipts, when used in connection with or in respect to financial transactions involving the sale of notes, stocks, bonds or other securities or the loan, collection or advance of money or the discounting of notes, bills or other evidence of debt, mean the gross interest, gross discount, gross commission or other gross receipts earned by means of, or resulting from such financial transactions, but gross receipts do not include any amount received as payment of debt.
- (Q) Gross receipts do not include the pass-through funds of any money lender duly organized, registered and doing business as a cooperative association under the Virginia Cooperative Association Act or any corresponding cooperative association act of any other state or the District of Columbia. However, all funds used for operating expenses, retained margins and reserves of any such cooperative association are gross receipts which are taxable in accordance with Section 4-7.2-31 of this Article. Any cooperative money lender whose gross receipts are subject to taxation in accordance with this subparagraph shall submit such documentary proof as required by the Director that the cooperative money lender is duly organized, registered and doing business as a cooperative association in the manner provided herein.
- (R) Gross receipts do not include donations, gifts or contributions made without consideration to a nonprofit organization described in Internal Revenue Code §501.
- (S) Gross receipts do not include any amounts received from withdrawals from inventory for purposes other than sale or distribution and for which no consideration is received and the occasional sale of assets other than inventory whether or not a gain or loss is recognized for federal purposes.
- (T) Gross receipts do not include investment income not directly related to the privilege exercised by a business subject to licensure not classified as rendering financial services. This exclusion shall apply to interest on bank accounts of the business, and to interest, dividends and other income derived from the investment of its own funds in securities and other types of investments unrelated to the licensed privilege. This exclusion shall not apply to interest, late fees and similar income attributable to an installment sale or other transaction that occurred in the regular course of business.
- (U) Gross receipts do not include general and administrative intra-company receipts or intra-company reimbursements or transfer payments.

- (V) Gross receipts do not include receipts on any venture capital fund or other investment fund, except commissions and fees of such funds. Gross receipts from the sale and rental of real estate and buildings remain taxable.
- (W) Gross receipts do not include rebates and discounts taken or received on account of purchases by the licensee. A rebate or other incentive offered to induce the recipient to purchase certain goods or services from a person other than the offer, and which the recipient assigns to the licensee in consideration of the sale goods and services shall not be considered a rebate or discount to the licensee, but shall be included in the licensee's gross receipts together with any handling or other fees related to the incentive.
- (X) Gross receipts do not include any amount representing the liquidation of a debt or conversion of another asset to the extent that the amount is attributable to a transaction previously taxed (e.g., the factoring of accounts receivable created by sales which have been included in taxable receipts even though the creation of such debt and factoring are a regular part of its business).
- (Y) Gross receipts do not include any amount representing returns and allowances granted by the business to its customer.
- (Z) Effective January 1, 1999, gross receipts derived solely from the design, development or other creation of computer software for lease, sale or license shall be subject to an exclusion in the amount set forth in the table below. This exclusion shall apply only to those receipts attributed to computer software design, development or creation activities actually performed at a definite place of business within Fairfax County as specified by Section 4-7.2-6.

The amount of gross receipts excluded by this section shall be determined as follows:

TAX YEAR BEGINNING	PERCENTAGE EXCLUSION
JANUARY 1, 1999	33% of software receipts
JANUARY 1, 2000	66% of software receipts
JANUARY 1, 2001 " & thereafter"	100% of software receipts

Section 4-7.2-24. Contractors and contracting; license tax rate.

Every person conducting or engaging in contracting occupations, businesses, trades or callings shall be considered a contractor and shall pay an annual license tax of Eleven Cents for each One Hundred Dollars of gross receipts. For the purposes of this Article, the meaning of the term "contractor" provided by Code of Virginia Section 58.1-3714(B) is incorporated by reference. The provisions of Code of Virginia Section 58.1-3715 relating (i) to licensing exemptions, (ii) to licensing requirements for businesses located outside of the County which do more than \$25,000 per year in the County and (iii) to credits for business done in other counties, cities and towns in which a similar tax is paid are incorporated by reference.

EXCERPTS FROM THE CODE OF VIRGINIA
TITLE 58.1-3732.2 through 58.1-3732.4

Code of Virginia § 58.1-3732.2 Limitation of Gross Receipts; Real Estate Brokers

Gross receipts of real estate brokers for license tax purposes under Chapter 37 (§ 58.1-3700 et seq.) of this title shall not include amounts received by any broker that arise from real estate sales transactions to the extent that such amounts are paid to a real estate agent as a commission on any real estate sales transaction and the agent is subject to the business license tax on such receipts. The broker claiming the exclusion shall identify on its license application each agent to whom the excluded receipts have been paid, and the jurisdiction in the Commonwealth of Virginia to which the agent is subject to business license taxes.

In the event that a real estate agent receives the full commission from the broker less an adjustment for the business license tax paid by the broker on such commissions and the agent pays a desk fee to the broker, the desk fee and other overhead cost paid by the agent to a broker shall not be included in the broker's gross receipts. If the agent files separately, the agent must identify on its license application the broker to whom such excluded receipts have been paid, and the amount of such receipts that were included in the broker's license application.

Code of Virginia § 58.1-3732.3 Limitation of Gross Receipts of Providers of Funeral Services.

Gross receipts of providers of funeral services for license tax purposed under Chapter 37 (§ 58.1- 3700 et seq.) of this title shall not include amounts collected by any provider of funeral services on behalf of, and paid to, another person providing goods or services in connection with a funeral. The exclusion provided by this section shall apply if the goods or services were contracted for by the provider of funeral services or his customer. A provider of funeral services claiming the exclusion shall identify on its license application each person to whom the excluded receipts have been paid and the amount of the excluded receipts paid by the provider of funeral services to such person. As used in this section, "*provider of funeral services*" means any person engaged in the funeral service profession, operating a funeral service establishment, or acting as a funeral director or embalmer.

Code of Virginia § 58.1-3732.4 Limitation on Gross Receipts: Staffing Firms.

A. Gross receipts for license tax purposes under this chapter shall not include employee benefits paid by a staffing firm to, or for the benefit of, any contract employee for the period of time that the contract employee is actually employed for the use of the client company pursuant to the terms of a PEO services contract or temporary help services contract. The taxable gross receipts of a staffing firm shall include any administrative fees received by such firm from a client company, whether on a fee-for-service basis or as a percentage of total receipts from the client company.

B: For the purpose of this section:

"*Client company*" means a person that enters into a contract with a staffing firm by which the staffing firm, for a fee, provides PEO services or temporary help services.

"*Contract employee*" means an employee performing services under a PEO services contract or temporary help services contract.

"*Employee benefits*" means wages, salaries, payroll taxes, payroll deductions, workers' compensation costs, benefits, and similar expenses.

"*PEO services*" or "*professional employer organization services*" means an arrangement whereby a staffing firm assumes employer responsibility for payroll, benefits, and other human resources functions with respect to employees of a client company with no restrictions or limitations on the duration of employment.

"*PEO services contract*" means a contract pursuant to which a staffing firm provides PEO services for a client company.

"*Staffing firm*" means a person that provides PEO services or temporary help services.

"*Temporary help services*" means an arrangement whereby a staffing firm temporarily assigns employees to support or supplement a client company's workforce.

"*Temporary help services contract*" means a contract pursuant to which a staffing firm provides temporary help services for a client company.