



Officers, 2025-2026

Mollie L. Miller
Chair
Fresenius Medical Care
North America

Jamie S. Laiewski
Vice Chair
Charter Communications

Karen DiNuzzo-Wright
Secretary & Treasurer
Walmart Inc.

Michael F. Carchia
Immediate Past Chair
Capital One Services, LLC

Robert J. Tuinstra, Jr.
Past Chair
Corteva Agriscience

Arthur J. Parham, Jr.
Past Chair
Entergy Services, LLC

Amy Thomas Laub
Past Chair
Nationwide Insurance Company

Patrick J. Reynolds
President
Council On State Taxation

Directors

Madison J. Barnett
The Coca-Cola Company

C. Benjamin Bright
HCA Healthcare, Inc.

Lani J. Canniff
Ameriprise Financial, Inc.

Kathryn S. Friel
Entergy Services, LLC

Damian B. Hunt
Amazon

Laura James
Kimberly-Clark Corporation

Jeffrey A. Langer
The Home Depot

Stephen J. LaRosa
Alexion Pharmaceuticals, Inc.

Jonathan M. Mieritz
Corteva Agriscience

Toni Mincic
Lumen Technologies

John H. Paraskevas
Exxon Mobil Corporation

Michael R. Raley
VF Corporation

Patrick A. Shrike
Cargill, Incorporated

Kyle Snedaker
Conagra Brands, Inc.

Andrew H. Solomon
Stagwell, Inc.

Beth L. Sosidka
AT&T Services, Inc.

Archana Warner
Constellation Energy
Corporation

Mark B. Holmes

Tax Counsel
(202) 484-5228
mholmes@cost.org

January 27, 2026

Via E-mail

Chair Bonita Anthony and Members of the House Finance Subcommittee #2
Virginia House of Delegates

Re: Support of H.B. 956 – BPOL Deduction for Out-of-State Gross Receipt Taxes

Dear Chair Anthony and Members of the House Finance Subcommittee #2:

On behalf of the Council On State Taxation (COST), I respectfully submit these comments in support of [H.B. 956](#), which would amend VCA § 58.1-3732 related to the current business, professional, and occupational license tax (BPOL), a gross receipts tax imposed at the local level. Currently, the statute allows a deduction from gross receipts for any receipts 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.”¹ H.B. 956 would clarify that “income or other tax based on income” would include not just “net income taxes” but also “gross income/receipt taxes.” This position would resolve inconsistent guidance from the Department of Taxation and cure potential U.S. Constitutional concerns.

About COST

COST is a nonprofit trade association based in Washington, DC, with a membership of approximately 500 multistate and multinational corporations engaged in interstate and international commerce, and many of them have significant business operations in the Commonwealth of Virginia. COST’s mission is to preserve and promote equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

Virginia’s BPOL Tax and the Out-of-State Receipts Deduction

Virginia’s BPOL tax is a local gross receipts tax. Ironically, the statute currently clearly allows a deduction for receipts attributable to business conducted in another state or foreign country where the taxpayer is subject to a tax based on “income”; however, it lacks clarity on its application to other states, which, like the BPOL, impose gross receipts/income taxes.

¹ [Virginia Code § 58.1-3732\(b\)\(2\)](https://law.lis.virginia.gov/vacode/title58.1/chapter37/section58.1-3732/#:~:text=A.,the%20ordinary%20course%20of%20business.) (<https://law.lis.virginia.gov/vacode/title58.1/chapter37/section58.1-3732/#:~:text=A.,the%20ordinary%20course%20of%20business.>)

Clarifying this deduction plays a critical role in preventing the BPOL tax from reaching beyond Virginia's borders. H.B. 956 appropriately recognizes that not all states impose a traditional net income tax. Several states have alternative business activity taxes that are measured by gross receipts, gross income, or modified gross income. For example, Ohio imposes the Commercial Activity Tax (CAT), a tax measured by gross receipts, and Texas imposes a franchise tax measured by gross margins, a modified form of gross income/receipts taxation.

Although these taxes differ in structure from a net income tax, they are nonetheless taxes based on income or receipts and serve the same function of taxing business activity within the imposing jurisdiction. H.B. 956 clarifies that the BPOL deduction is allowed to a taxpayer, whether it is subject to either a net income tax or a gross receipts/income tax.

Inconsistent Department of Taxation Guidance

During a 2025 Workgroup discussion, it was clear that the Department of Taxation took the position early on that “income or other tax based on income” for purposes of the deduction was not limited to “net income tax” but also included gross receipt/income taxes. This position intuitively makes sense as the BPOL tax itself is a gross receipts tax. Recent guidance² from the Department of Taxation has, however, created confusion by suggesting that taxpayers’ BPOL deductions are restricted only to receipts attributable to business conducted in another state or foreign country that imposes a “net income tax.” We think this guidance is inconsistent with the statute and prior guidance from the Department. Interestingly, six months after issuing guidance that caused confusion, the Department issued more inconsistent guidance,³ that the BPOL, which is a gross receipts tax, is an “income tax” under the federal Buck Act,⁴ which protects the imposition of state and local income taxes on activity occurring within a federal area. While we believe this guidance is inconsistent, H.B. 956 would cure this issue.

Constitutional Considerations

Denying a deduction for receipts attributable to states that impose business activity taxes measured by income or receipts raises serious constitutional concerns. The U.S. Supreme Court requires that state and local taxes on interstate commerce be fairly apportioned and may not be based on extraterritorial activity. When BPOL taxes receipts earned in another state where the taxpayer is already subject to a business activity tax, the result risks multiple taxation of the same activity and taxation of value created outside Virginia. H.B. 956 helps ensure that the BPOL statute continues to operate within constitutional limits.⁵

² [Tax Commissioner Ruling 22-117, July 21, 2022](https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/22-117) (<https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/22-117>)

³ [Tax Commissioner Ruling 22-164, December 20, 2022](https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/22-164) (<https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/22-164>)

⁴ 4 U.S.C. §§ 105-110

⁵ See, for example, *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977), where the U.S. Supreme Court held state and local taxes must be fairly apportioned.

Conclusion

H.B. 956 represents a measured and important clarification to Virginia's BPOL statute. It promotes fairness among similarly situated taxpayers, reflects the diversity of state business tax regimes, improves administrability, and reinforces the constitutional integrity of the BPOL tax. For these reasons, COST respectfully supports H.B. 956 and urges the Subcommittee to give the bill favorable consideration. If you have any questions or would like to discuss these comments further, please do not hesitate to contact me.

Respectfully submitted,

Mark B Holmes

Mark B. Holmes
Tax Counsel

cc: COST Board of Directors
Patrick J. Reynolds, COST President & Executive Director