

HAMPTON VA

NEWS RELEASE

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State ruling prompts change in tax calculation; City Council to vote on refund

March 20, 2015 – Hampton City Council is scheduled to vote Wednesday on appropriating \$765,000 for a tax refund for West Telemarketing. The move is in reaction to a state Supreme Court ruling that sets a precedent changing how localities throughout the state have traditionally calculated the business, professional and occupational license tax, commonly called BPOL.

According to a Washington Post story Feb. 25, the court's ruling will mean that localities throughout the state will face "tens of millions of dollars less in revenue in government coffers when budgets are already tight because of a weak commercial real estate market, a still-anemic local economy and the ever-growing demands for new and better schools and other services." The Post story estimated the cost to Fairfax County as \$30 million – just in this year alone.

Virginia's 200-year-old BPOL tax allows localities to tax a percentage of a business' gross receipts, on a rate that varies based on the type of industry. Recent challenges have centered on how a company can exclude gross receipts earned outside the state. In the state Supreme Court case, the Nielsen media company challenged Arlington County's BPOL tax assessment.

Similarly, in Hampton, West Telemarketing appealed its tax assessments from 2003-2007. The current state tax commissioner agreed with the company that West should be allowed to a deduction of a portion of its out-of-state gross receipts without proving this deduction was from income included in the BPOL gross receipts reported to Hampton. Hampton's commissioner of the revenue took the position that West could not deduct a portion of its out-of-state gross receipts from Hampton taxable income without proof that these receipts were included in the BPOL gross receipts reported to Hampton. Hampton officials asked for a judicial review in Circuit Court.

Hampton's method of determining the tax assessment – the same used by Arlington and other localities throughout the state – had been upheld by previous state tax commissioners. Although the West case in Hampton Circuit Court has not been decided, the Supreme Court's ruling in the Arlington case sets a legal precedent that localities will have to honor.

Hampton's City Council resolution, which is on the March 25 meeting agenda, would authorize the \$765,000 payment to West to settle all claims. That includes claims in the court case, as well as appeals for tax years 2008-2010, when West Telemarketing closed its Hampton operation. The city would use money from its fund balance.

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