TAXATION: LICENSE TAXES.

Compensation received by standing trustee in Chapter 13 bankruptcy for performance of his administrative duties associated with such bankruptcy is subject to local business license taxation.

The Honorable Kenneth R. Melvin
Member, House of Delegates
April 2, 2002

Issue Presented

You ask whether compensation received by a standing trustee in a Chapter 13 bankruptcy is subject to local business license taxation.

Response

It is my opinion that such compensation is subject to local business license taxation.

Applicable Law and Discussion

Pursuant to federal bankruptcy law, a standing trustee in a Chapter 13 bankruptcy receives compensation for his duties as trustee. The source of this compensation is a percentage of the payments made by Chapter 13 debtors.

Chapter 37 of Title 58.1 of the Code of Virginia sets forth the enabling legislation for the local assessment of business license taxes. Section 58.1-3703(A) authorizes the governing body of a locality to adopt an ordinance assessing a business, professional and occupational license (“BPOL”) tax on the gross receipts of any person, firm or corporation that is operating a licensable business within the locality.

In an analogous opinion of the Attorney General, the inquiry concerned whether commissioners of accounts were subject to BPOL taxes on the fees charged and received by them for their administration of fiduciary accounts. The 1997 opinion concludes that such amounts are gross receipts subject to local license taxation.

Similar to commissioners of accounts, who perform administrative duties relative to the fiduciary accounts for which they are appointed, a standing trustee performs administrative duties relative to the bankruptcies for which they are appointed and receive compensation. In light of the 1997 opinion, concluding that the compensation of commissioners of accounts is subject to BPOL taxes, it is my opinion that the compensation of federal bankruptcy trustees similarly is subject to BPOL taxes. Additionally, I am aware of no federal law exempting the compensation of such trustees from local business license taxation.

Conclusion
Accordingly, it is my opinion that compensation received by a standing trustee in a Chapter 13 bankruptcy for the performance of his administrative duties associated with such bankruptcy is subject to local business license taxation.

1 If the number of Chapter 13 bankruptcy cases "commenced in a particular region so warrants," a regional United States trustee may, with the approval of the United States Attorney General, "appoint one or more individuals to serve as standing trustee." 28 U.S.C.A. § 586(b) (West 1993).

2 See id. § 586(e)(1) (West 1993).

3 See id. § 586(e)(2) (West 1993).


7 Id.


9 Compare Public Salary Tax Act of 1939, 4 U.S.C.A. § 111 (West Supp. 2001) (authorizing states to tax pay of federal employees so long as tax does not discriminate against such employee because of source of pay or compensation), and Jefferson County v. Acker, 527 U.S. 423, 439-42 (1999), cert. denied, 532 U.S. 1051 (2001) (holding that local tax paid by state and federal judges on compensation received by them shows no discrimination due to source of compensation).