

TAXATION: LICENSE TAXES.

For business license tax purposes, funds travel agency disburses on behalf of clients for travel and accommodation are not included in agency's gross receipts. Funds travel agency receives from travel package it purchases and resells to clients at increased price would be included in agency's gross receipts. Determination whether funds travel agency receives from its clients constitute gross receipts lies with commissioner of revenue and depends on nature of transaction among agency, its clients and recipients of funds.

The Honorable Philip J. Kellam
Commissioner of the Revenue for the City of Virginia Beach
September 14, 1999

You ask under what circumstances the funds handled by travel agencies are excluded from gross receipts under the business license tax provisions of Chapter 37 of Title 58.1, §§ 58.1-3700 through 58.1-3735 of the *Code of Virginia*.

You state that travel agencies operate by accepting funds from clients, forwarding the funds to the appropriate airline, cruise line or hotel, and receiving a commission on the transaction. You ask whether the funds forwarded to the airline, cruise line or hotel are to be included in the travel agencies' gross receipts for business license tax purposes.

Section 58.1-3700.1 defines "gross receipts" as "the whole, entire, total receipts, without deduction." Prior opinions of the Attorney General conclude that, under certain circumstances, the term does not include funds which the business receives and disburses as the agent for another.¹ Thus, the term does not include monies that an attorney receives from a client and places in an escrow account, such as in the settlement of a real estate sales transaction, or monies that a client submits to reimburse the attorney for the payment of court costs and fees.² The attorney is merely handling funds as the agent for his client and is not receiving funds for the rendering of services.

Neither does the term include funds a corporation receives from foreign clients and disburses to the clients' United States vendors, although the management fee charged the clients for processing the orders and disbursing the funds constitutes gross receipts.³ Likewise, investment assets managed by a mutual fund management company, which remain the funds of the clients, are not deemed a part of the company's gross receipts.⁴ As noted in the opinions, "gross receipts are not subject to a local gross receipts tax when the taxpayer acts as the agent or fiduciary for another in receiving and disbursing money on behalf of a person or entity other than the taxpayer."⁵

Whether a business acts as a disbursing agent on behalf of another is a determination of fact to be made by the local commissioner of the revenue.⁶ In the case of *Alexandria v. Morrison-Williams Associates, Inc.*,⁷ the Supreme Court of Virginia considered the operations of an advertising agency that placed its clients' advertisements with media sources. The media sources billed the advertising agency for the costs of the advertisements, and the advertising agency billed the clients for these costs plus its commissions. Upon review of all of the facts, the Court held that the advertising agency did not act merely as a disbursing agent for its clients and that, therefore, the amount the clients paid the agency for the media costs was included within the agency's gross receipts. The clients had no contact with the media sources and were under no obligation to pay the media should the advertising agency fail to pay. The media costs were viewed as an expense of the advertising agency incurred in connection with its providing a service to its clients.⁸

Whether the funds a travel agency receives from its clients for payment to the airlines, cruise lines or hotels constitute gross receipts likewise will depend on the nature of the transaction among the agency, its clients and the recipients of the funds. If the clients submit funds to the travel agency for the agency to disburse to the intended recipients on the clients' behalf, with the clients' paying a separate fee to the travel agency for the services the agency renders the clients, it is my view that the funds the agency disburses to the recipients would not be included in the agency's gross receipts. If, on the other hand, the travel agency provides a product that includes travel expenses and accommodations which the agency, in effect, purchases and resells to its clients at an increased price, the reasoning of the Court in *Alexandria v. Morrison-Williams* suggests that the total cost to the client would be included in the travel agency's gross receipts. The final determination is to be made by you as commissioner of the revenue upon consideration of all of the facts.

¹See Op. Va. Att'y Gen.: 1995 at 250; 1986-1987 at 285; 1985-1986 at 281.

²1985-1986 Op. Va. Att'y Gen., *supra*, at 282.

³1986-1987 Op. Va. Att'y Gen., *supra*, at 286.

⁴1995 Op. Va. Att'y Gen., *supra*, at 252.

⁵*Id.*; see also 1985-1986 Op. Va. Att'y Gen., *supra*, at 282.

⁶See Op. Va. Att'y Gen.: 1986-1987, *supra*, at 286; 1983-1984 at 371, 372.

⁷223 Va. 349, 288 S.E.2d 482 (1982).

⁸The Court viewed the transaction as analogous to a wholesale retail operation, in which the retailer purchases goods from a wholesaler and sells to the public at a marked-up price. *Id.* at 351, 288 S.E.2d at 484.