

DEPARTMENT OF TAXATION

2002 Fiscal Impact Statement

1. **Patron** Howell

3. **Committee** House Finance

4. **Title** Income Tax Appeals Process

2. **Bill Number** HB 1172

House of Origin:

X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would allow a taxpayer to appeal any assessment of individual income tax or corporate income tax to an independent hearing examiner. The independent hearing examiner would be appointed by the Attorney General from a list of "experienced tax attorneys" licensed to practice law in the Commonwealth. This bill would also eliminate the requirement to either pay an assessment in full or post a bond before a Taxpayer is allowed to appeal a decision of the independent hearing examiner or the Tax Commissioner to the Circuit Court.

The effective date of this bill is not specified.

6. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

7. **Budget amendment necessary:** Yes.

8. **Fiscal implications:**

As this bill would allow additional appeals of income tax assessments without the requirement that the taxes be paid before the appeal, this bill would have a negative effect on General Fund revenues to the extent that these appeals are successful or delay the collection of proper assessments.

The department would incur additional administrative costs as additional personnel would be needed to handle the appeals to the independent hearing examiner. The number of additional personnel that would be needed is unknown as this would be largely dependent on the volume of appeals heard by an independent hearing examiner. In addition, it is assumed that the Commonwealth would also be required to provide funds to compensate the independent hearing examiners. The amount of funds necessary for this is also dependent on the volume of appeals to the independent hearing examiner. It is expected that this cost would be significant on a per case basis.

9. Specific agency or political subdivisions affected:

Department of Taxation
Office of the Attorney General

10. Technical amendment necessary: Yes.

In the new appeals process created by this bill, the time for filing an appeal with the Attorney General's office under subsection A of § 58.1-1823.1 is in direct conflict with subsection C of the same section. Subsection A allows appeals to an independent hearing examiner within three years from the date of an assessment or within one year from a determination of the Tax Commissioner, whichever is later. Subsection C allows appeals to an independent hearing examiner within 90 days after an assessment or a determination by the Tax Commissioner, whichever is later. As these two subsections are in direct conflict with one another, this bill should be amended so the time for appealing an assessment or determination under each subsection is consistent with one another.

11. Other comments:

The Commonwealth's Current Income Tax Appeals Process

Under current law, if a taxpayer is assessed for a tax administered by the department, they have two options for appealing the assessment. By statute a taxpayer is allowed to appeal an assessment to the Tax Commissioner within 90 days from the date of such assessment. The taxpayer is required to submit a letter to the Tax Commissioner setting forth the grounds upon which the assessment is being appealed and is not required to pay the assessment before the appeal. As a practical matter, TAX does not require an appeal to be submitted within 90 days, instead allowing an appeal to be filed at any point within the three year statute of limitations for pursuing a judicial remedy. This has been a long-standing procedure to avoid forcing taxpayers to utilize the more expensive judicial process and to reduce the amount of litigation in Virginia.

The Virginia appeals process is non-evidentiary. As a result, taxpayers can and do represent themselves *pro se* before the Tax Commissioner in appealing an assessment. In addition, TAX streamlined its audit resolution process a number of years ago to give taxpayers quicker access to an appeal to the Commissioner. Virginia no longer subjects audits to an "audit review" function which is found in many revenue agencies, but instead treats contested audits as appeals. This allows taxpayers to receive a single response to an assessment issue reviewed at the highest level of TAX. The tax appeal process in Virginia was favorably reviewed in CFO magazine.

The second option available to taxpayers is to apply to the circuit court for correction of erroneous or improper assessments of tax. This appeal must be filed within three years from the date of the assessment. In addition, the assessment must have been paid or a bond must have been posted within 90 days of the assessment. Taxpayers may also use this option for an appeal of a determination of the Tax Commissioner. Such an appeal must be filed within one year from the date of the determination.

For any appeal to the circuit court, the department is named as the defendant and the burden of showing that the assessment is erroneous is on the taxpayer.

Using this current appeals process, the Commonwealth has seen a very low incidence of tax litigation. This is primarily attributable to the department's ability to effectively resolve the majority of issues on an administrative basis. Current law gives the Tax Commissioner broad authority on many tax issues which allows for necessary adjustments and compromises on complicated issues.

Proposal

As drafted, this bill provides an additional appeals option for individual and corporate income tax only. Taxpayers would be able to appeal an income tax assessment to an independent hearing examiner. The independent hearing examiner would be appointed by the Attorney General from a list of "experienced tax attorneys" licensed to practice law in the Commonwealth. It is not clear why this remedy is limited to income taxes or whether the appeal to an independent hearing officer is intended to be in addition to or in lieu of the administrative appeal to the Tax Commissioner.

For an appeal to an independent hearing examiner, a taxpayer would have to file an appeal within three years of the date of an assessment or one year after a final determination by the Tax Commissioner on an administrative appeal. To perfect an appeal to an independent hearing examiner, a taxpayer would have to file an application of appeal with the Attorney General's office within 90 days of the assessment or the Commissioner's determination. In addition, taxpayers would be allowed to file protective claims on pending appeals to the independent hearing examiner.

In any proceeding before the hearing examiner, the burden would be on the taxpayer to show that the assessment or determination being appealed is erroneous or improper in nature.

This bill would also eliminate the requirement to either pay an assessment in full or post a bond before a Taxpayer is allowed to appeal a decision of the independent hearing examiner or the Tax Commissioner to the Circuit Court.

Other Legislation

House Bill 317 would broaden the Department of Taxation's authority to hear appeals of the local Business, Professional and Occupational License (BPOL) Tax. Under current law, only audit assessments may be appealed using this administrative appeals process. Under this bill, all assessments of BPOL taxes may be appealed to the Department of Taxation.

House Bill 318 would broaden the Department of Taxation's authority to hear appeals of assessments of various local taxes. This bill would grant the Department authority over the local wills and administration tax, recordation tax, consumer utility tax, admissions tax, video programming excise tax, transient occupancy tax, cigarette tax, food and beverage tax, and meals tax. Under current law, only audit assessment of the BPOL tax and assessments of the local machinery and tools tax, business tangible personal property tax and merchant's capital tax may be appealed using this administrative appeals process.

cc : Secretary of Finance

