

DEPARTMENT OF TAXATION

2002 Fiscal Impact Statement

1. **Patron:** Howell

3. **Committee:** Senate Finance

4. **Title:** Business, Professional and Occupational
License Tax Appeals

2. **Bill Number:** HB 317

House of Origin:

 Introduced

 Substitute

 Engrossed

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would provide that taxpayers may utilize the Business, Professional and Occupational License (BPOL) Tax administrative appeals process through the local Commissioner of the Revenue and the state Department of Taxation to appeal all assessments and denials of refund requests of BPOL taxes. Under current law, only audit assessments may be appealed to the Department of Taxation using this administrative appeals process.

This bill would also provide that in order to utilize the BPOL administrative appeals process, taxpayers must file their appeals with the local assessing officer within one year of the last day of the tax year for which the assessment is made, or within one year of the date of the appealable event, whichever is later. Under current law, taxpayers must file their appeals with the local assessing officer within ninety days of the date of the assessment.

This bill would also clarify that in the event a taxpayer does not receive a final determination on an appeal from the local assessing officer within two years of filing the appeal, the taxpayer may treat the lack of action as an adverse final local determination eligible for appeal to the state Department of Taxation. Current law does not address this issue.

The provisions of the bill would be effective for all appeals filed on or after July 1, 2002. However, the provision authorizing a taxpayer who has not received a final local determination within two years to file an appeal with the state Department of Taxation would be effective for all appeals pending or filed on or after July 1, 2002.

6. **Fiscal Impact Estimates are:** Tentative (see Line 8)

6a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2001-02	\$0	0	GF
2002-03	(\$50,000)	1	GF
2004-04	(\$50,000)	1	GF

7. Budget amendment necessary: Yes.

Item 283, Department of Taxation

8. Fiscal implications:

Localities

As this bill would allow additional assessments and denials of refund requests to be appealed using the administrative appeals process, this bill would have a negative effect on local revenues to the extent that these appeals are successful.

Department of Taxation

As this bill would require the department to rule on additional appeals, the department would incur administrative costs under this bill.

The fiscal cost to the department of administering this broadened appeals process is expected to be \$50,000 in FY 2003 and the same amount in FY 2004. This estimate is based on the assumption that the department would require one additional policy analyst to handle the additional appeals. It also assumes the current starting salary of a Tax Appeals Analyst, which is a Pay Band 5 position, is approximately \$39,000. Assuming additional benefit expenses of 30%, the total annual compensation and benefit cost would be approximately \$50,000. Accordingly, the total annual personnel costs (for one analyst) associated with this bill would be approximately \$50,000.

Taxpayers

Currently, BPOL assessments that do not result from audits may only be appealed to the local assessing officer or to the circuit court.

Under this bill, taxpayers would be better able to appeal disputed assessments that do not result from audits and denials of refund requests without incurring the expenses of litigation, such as attorney's fees and court reporter expenses, typically incurred in an appeal to a circuit court.

9. Specific agency or political subdivisions affected:

Department of Taxation
All localities

10. Technical amendment necessary: No.

11. Other comments:

Since 1996, when uniform ordinance provisions were enacted to amend the current BPOL statutes, the department has been responsible for ruling on appeals of BPOL tax audit assessments and issuing official written opinions on non-appeal questions. The 1996 amendments were intended to bring about uniformity in the administration of the local BPOL tax and to institute common procedures within localities for appealing BPOL assessments.

Currently, only audit assessments may be appealed using the BPOL administrative appeals process. This bill would expand the scope of the BPOL administrative appeals process to include all “appealable events.”

An “appealable event” would be an increase in an assessment, the denial of a refund request, or the assessment of a local license tax where none previously was assessed, arising out of any of the following actions by the local assessing official:

- An examination of records, financial statements, books of account or other information for the purpose of determining the correctness of an assessment,
- A determination regarding the rate or classification applicable to the licensable business,
- An assessment when no return has been filed by the taxpayer, or
- Denial of an application for correction of erroneous assessment attendant to the filing of an amended application for license.

For appeals of state taxes, taxpayers are allowed to file administrative appeals with the Department of Taxation within 90 days after the date of assessment pursuant to Code of Virginia § 58.1-1821. As a practical matter, the department allows taxpayers to file administrative appeals as long as judicial remedies are available.

This practice provides for a more efficient process and avoids unnecessary litigation.

House Bill 318 makes similar changes to Local Business Tax administrative appeals process established in the 1999 General Assembly for appeals of assessments of the machinery and tools, business tangible personal property and merchant's capital taxes.

c: Secretary of Finance

Date: 2/12/02/JEM

Document: S:\2002leg\WorkInProgress\OTPwork\House Bills\HB0317FH1161.doc