

# DEPARTMENT OF TAXATION

## 2002 Fiscal Impact Statement

1. **Patron:** Howell

3. **Committee:** House Finance

4. **Title:** Local Business Tax Appeals

2. **Bill Number:** HB 318

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

5. **Summary/Purpose:**

This bill would provide that taxpayers may utilize the Local Business Tax administrative appeals process through the local Commissioner of the Revenue and the state Department of Taxation to appeal assessments of 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 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.

This bill would also provide that in order to utilize this administrative appeals process, taxpayers must file their appeals with the local assessing officer within three years of the date of the assessment. Under current law, taxpayers must file their appeals within ninety days of the date of the assessment.

This bill would also provide that in the event a taxpayer does not receive a final determination on an appeal from the local assessing officer within one year 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 pending or filed on or after July 1, 2001.

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	(\$150,000)	3	GF
2004-04	(\$150,000)	3	GF

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

Item 283, Department of Taxation

**8. Fiscal implications:**

Localities

As this bill would allow assessments of additional local taxes 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. Localities may incur additional administrative costs in implementing and participating in a formal appeals process.

Department of Taxation

The department would incur administrative costs under this bill. The bill would require the department to rule on appeals of assessments of 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.

The potential volume of appeals is significant. Every locality in the Commonwealth would be affected. Although an appeal could arise from many situations, most are likely to result from audit assessments. A survey by the Virginia Municipal League in 1996 asked how many businesses were audited annually by the localities. The responses indicated that over 14,000 audits were performed in the 18 counties, 22 cities, and 40 towns which responded. It is clear that appeals of even a small percentage of local tax audits would prove too large for current staffing levels.

The fiscal cost to the department of administering this new appeals process is expected to be \$150,000 in FY 2003 and the same amount in FY 2004. This estimate is based on the assumption that the department would require an additional three policy analysts 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 per analyst would be approximately \$50,000. Accordingly, the total annual personnel costs (for three analysts) associated with this bill would be approximately \$150,000.

Taxpayers

Currently, taxpayers may appeal assessments of 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 to the local assessing officer or to the circuit court. Taxpayers will be better able to appeal

assessments of these taxes 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 Business, Professional and Occupational License (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. The procedures for appealing BPOL assessments include the right to appeal certain assessments to the state Tax Commissioner.

In the 1999 General Assembly, a similar appeal process was established for the "Local Business Taxes." Currently, this appeals process is limited to appeals of the machinery and tools, business tangible personal property and merchant's capital taxes.

This bill would promote uniformity in the local administration and appeals of 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.

For appeals of state taxes, Code of Virginia §58.1-1821 provides that taxpayers are allowed to file administrative appeals with the Department of Taxation within 90 days from the date of assessment. 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 317 would allow taxpayers to file appeals of BPOL taxes within three years of the date of assessment and allow appeals to be eligible for review by the Department of Taxation if the local assessing officer takes no action within one year of filing the appeal.

c: Secretary of Finance

Date: 1/15/02/JEM

