

DEPARTMENT OF TAXATION

2004 Fiscal Impact Statement

1. **Patron** Thelma Drake

2. **Bill Number** HB 464

House of Origin:

 Introduced

 Substitute

 Engrossed

3. **Committee** Senate Finance

4. **Title** Local Taxes; Appeals Process

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would make the following changes to the procedures for appealing assessments of local taxes: (a) expanding the Department of Taxation's authority to hear local tax appeals to include assessments of the tangible personal property tax on airplanes, boats, campers, recreational vehicles and trailers; (b) prohibiting localities from engaging in collection activity when an assessment is appealed to the circuit court; and (c) requiring localities to provide taxpayers with detailed information at the time assessments are issued with respect to how the assessment was determined and a description of the taxpayer's appeal rights.

This bill would be effective for tax years beginning on or after January 1, 2005.

6. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

7. **Budget amendment necessary:** No.

8. **Fiscal implications:**

Administrative Costs

Under current law, only assessments of the machinery and tools tax, the merchants' capital tax and the business tangible personal property tax (the "Local Business Taxes") and the business, professional and occupational license ("BPOL") tax may be appealed to the Department. Assessments of other local taxes, including the tangible personal property tax cannot be appealed to the Department. The Department should be able to resolve appeals of assessments of the tangible personal property tax on airplanes, boats, campers, recreational vehicles and trailers with existing resources. This bill would have an unknown impact on the costs of local tax administration.

Revenue Implications

This bill would have no impact on state revenues. As this bill would require localities to suspend collection activity on assessments of tangible personal property tax on airplanes,

boats, campers, recreational vehicles and trailers appealed to the Tax Commissioner or circuit court, it would have a potential negative impact on local revenues and on local cash flows.

9. Specific agency or political subdivisions affected:

Department of Taxation
All counties, cities and towns

10. Technical amendment necessary: No.

11. Other comments:

Local Tax Appeals

In general, a taxpayer may seek correction of a local tax assessment by filing an appeal with the local assessing officer and/or the circuit court. In addition to these avenues of appeal, a taxpayer may also appeal an assessment of the machinery and tools tax, the merchants' capital tax and the business tangible personal property tax (the "Local Business Taxes") and the business, professional and occupational license ("BPOL") tax to the Department. Typically, an appeal to the assessing officer or the Department is a quick and informal procedure, compared to the formal evidentiary proceedings in the circuit court.

The procedures for appealing local taxes have been substantially revised in recent years. The BPOL administrative appeals process through the local commissioner of the revenue and the Department was created in 1996. A similar appeals process through the commissioner of the revenue and the Department was added in 1999 for the Local Business Taxes.

Suspension of Collection Activity

Under current law, all collection activity is suspended on BPOL and Local Business Tax assessments when the taxpayer files a formal application for review of the assessment at the local level, and later at the state level. Collection activity is not suspended in situations where the treasurer determines that collection would be jeopardized by delay or is informed that the taxpayer has failed to respond to a request for relevant information after a reasonable time. The suspension of collection activity continues through the formal review process. The *Code of Virginia* is silent on collection activity when a taxpayer appeals an assessment of other local taxes to the assessing officer or the circuit court.

The suspension of collection activity provision for the BPOL and Local Business Tax administrative appeals procedures is similar to that applicable to administrative appeals of state taxes to the Department. Although collection activities are suspended while state tax assessments are under appeal to the Department, prior to 2003, taxpayers were required to pay the assessment or post a bond in order to appeal an assessment of state taxes to the circuit court. Chapter 908 of the 2003 Acts of Assembly removed the prepayment requirement. The court, however, may require the taxpayer to pay the

assessment before proceeding with the appeal if the Department can demonstrate that it is likely to prevail on the merits of the case. The taxpayer may still avoid payment by posting a bond or offering an irrevocable line of credit.

Proposal

This bill would expand the Department of Taxation's authority to hear local tax appeals to include assessments of the tangible personal property tax on airplanes, boats, campers, recreational vehicles and trailers. The Department would not be required to make a determination regarding the valuation or method of valuation for assessments of the tangible personal property tax on airplanes, boats, campers, recreational vehicles and trailers. The determination of value and valuation methodology would remain subject to local determinations.

Localities would be prohibited from engaging in collection activity, including withholding a business license or a personal property tax decal, when an appeal of a local tax assessment is made to the circuit court. Collection activity would be allowed if the locality can demonstrate to the court that collection would be seriously jeopardized by delay or that the locality is likely to prevail on the merits of the case. If the court grants the motion, the taxpayer may still have collection activity suspended by posting a bond or offering an irrevocable line of credit.

This bill would require localities to provide the following information at the time assessments are issued:

- The amount of the assessment, and if it is on property, a description of that property;
- The valuation method used;
- The applicable tax rate;
- The date the taxes will be due;
- The method of calculating interest that may accrue on the taxes; and
- The procedures for appealing the assessment.

Other Legislation

House Bill 1122 provides that when a taxpayer appeals the assessment of a BPOL or Local Business Tax to a circuit court, the assessing official must suspend all collection activity while the court retains jurisdiction unless the court determines collection would be jeopardized by delay.

cc : Secretary of Finance

Date: 2/23/2004/JEM