

DEPARTMENT OF TAXATION

2005 Fiscal Impact Statement

1. **Patron** L. Scott Lingamfelter

3. **Committee** House Finance

4. **Title** Local Taxes; Appeals

2. **Bill Number** HB 2679

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would provide that when a taxpayer appeals an assessment of business, professional and occupational license ("BPOL") taxes to the commissioner of revenue or the Tax Commissioner, collection activity is only suspended with respect to the amount of the assessment that is in dispute. With respect to appeals of the BPOL tax, the machinery and tools tax, the merchants' capital tax and the business tangible personal property tax (the "local business tax"), the tangible personal property tax on airplanes, boats, campers, recreational vehicles and trailers (the "local mobile property tax"), this bill would provide that the locality must suspend collection activity when the taxpayer appeals a determination of the Tax Commissioner to the circuit court.

Under current law, collection activity on the entire assessment is suspended when it is appealed to the commissioner of the revenue or the Tax Commissioner. Collection action is not suspended when an assessment is appealed to the circuit court.

The effective date of this bill is not specified.

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

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

8. **Fiscal implications:**

This bill would have no impact on state revenues. To the extent that the collection of disputed local taxes may be accelerated or delayed, depending on the situation, this bill may have a minimal but unknown impact on local revenues.

9. **Specific agency or political subdivisions affected:**

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 tax"), the tangible personal property tax on airplanes, boats, campers, recreational vehicles and trailers (the "local mobile property tax") and the business, professional and occupational license ("BPOL") tax to the Department. The BPOL administrative appeals process through the commissioner of the revenue and the Department was created in 1996. Similar appeals processes were added in 1999 for the local business tax and in 2004 for the mobile property tax. 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. Under these administrative appeals processes, either the taxpayer or the locality may appeal a determination of the Department to the circuit court. The party making the appeal bears the burden of showing that the Department's ruling is erroneous.

Suspension of Collection Activity

Under current law, the locality must suspend collection activity once a taxpayer files an application for correction or notice of intent to file an appeal with the local commissioner of the revenue or the Tax Commissioner under the BPOL, local business tax or local mobile property tax administrative appeals processes. Collection activity is not suspended if the locality determines that collection would be jeopardized by delay or the taxpayer has not responded to a request for relevant information after a reasonable time. Current law does not provide for the suspension of collection activity when a taxpayer appeals the determination of the Tax Commissioner to the circuit court.

Proposal

This bill would provide that when a taxpayer appeals an assessment of BPOL taxes to the local commissioner of revenue or the Tax Commissioner, collection activity is only suspended with respect to the amount of the assessment that is in issue in the appeal. The bill would not change the suspension of collection provisions for administrative appeals of the local business tax and the local mobile property tax.

With respect to appeals of the BPOL tax, local business tax and the local mobile property tax, this bill would also provide that the locality must suspend collection activity upon receipt of a notice of intent that the taxpayer will appeal the determination of the Tax Commissioner to the circuit court. In order for collection activity to be suspended, the taxpayer must identify the amount of the tax that is in dispute with particularity and pay the portion of the tax that is not in dispute together with any penalty and interest then due with respect to such undisputed portion of the tax. Collection activity would resume if the taxpayer does not file its application for relief to the court and have it served on the necessary parties within thirty days of filing the notice of intent to appeal. Collection activity may also resume if the court rules that (1) the locality is likely to prevail upon the

merits because the application for relief is not well grounded in fact, not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, interposed for an improper purpose, such as to harass, to cause unnecessary delay in the collection of the revenue, or to create needless cost to the locality from the litigation, or otherwise frivolous; (2) collection would be jeopardized by delay; or (3) that suspension of collection would cause substantial economic hardship on the applicable locality. For the purposes of determining whether "substantial economic hardship" would arise from a suspension of collection activity, the court may consider the cumulative effect of then-pending appeals filed by different taxpayers that allege common claims or theories of relief.

This bill would also clarify the roles of the commissioner of the revenue or other assessing officer and the treasurer or other collecting officer with respect to suspension of collection activities.

Other Legislation

House Bill 2373 would provide for an administrative appeals process through the local commissioner of the revenue and the Department for the local recordation tax, the consumer utility taxes, the admissions tax, the video programming excise tax, the transient occupancy tax, the cigarette tax and the meals tax.

House Bill 2374 would shorten from two years to 180 days the time that must pass before a taxpayer may elect to treat a commissioner of the revenue's failure to issue a final determination on a local business tax or local mobile property tax appeal as a denial of the appeal so that the taxpayer may appeal the assessment to the Tax Commissioner absent a final determination from the commissioner of the revenue.

cc : Secretary of Finance

Date: 1/29/2005 JEM