

# DEPARTMENT OF TAXATION

## 2005 Fiscal Impact Statement

1. **Patron** L. Scott Lingamfelter

2. **Bill Number** HB 2679

**House of Origin:**

           **Introduced**

           **Substitute**

           **Engrossed**

3. **Committee** Passed House and Senate

4. **Title** Local Taxes; Appeals

**Second House:**

           **In Committee**

           **Substitute**

  X   **Enrolled**

### 5. **Summary/Purpose:**

This bill would make several changes to the administrative appeals process related to the business, professional and occupational license ("BPOL") tax, the machinery and tools tax, the merchants' capital tax and the business tangible personal property tax (the "local business tax") and the tangible personal property tax on airplanes, boats, campers, recreational vehicles and trailers (the "local mobile property tax"). Specifically, this bill would provide that when a taxpayer appeals an assessment of 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 BPOL, local business and local mobile property tax assessments, this bill would also provide that the locality must suspend collection activity when the taxpayer appeals a determination of the Tax Commissioner to the circuit court. This bill would expand the local business tax administrative appeals process to include local consumer utility taxes, except for the consumer utility tax on mobile telecommunications, where the amount in dispute exceeds \$2,500. Additionally, this bill would shorten from two years to one year 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 an 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.

The provisions of this bill would apply to appeals filed on or after July 1, 2005.

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 would have an unknown impact on local revenues. The Department should be able to resolve appeals of assessments of the consumer utility tax with existing resources. This bill would have an unknown impact on the costs of local tax administration.

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

All counties, cities and towns.

**10. Technical amendment necessary: Yes.**

As *Va. Code* § 58.1-3983.1 applies to appeals of local business tax and local mobile property tax assessments rather than local license tax assessments, the following technical amendment is suggested:

Page 10, Line 581, After local

Strike: license

Insert: business tax or local mobile property

**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.

The Department has promulgated guidelines for appealing the BPOL tax, the local business tax and the mobile property tax. The guidelines explain how taxpayers may use the administrative appeals processes and how local officials should respond to taxpayer appeals. The guidelines state that the assessing officer's final local determination should be in writing and include facts and legal authority in support of his position on each issue raised by the taxpayer. The guidelines also provide that when filing an appeal of a final local determination with the Department, the taxpayer must enclose a copy of the final local determination. In 2002, these appeals processes were amended to 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 Department of Taxation.

## 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 a BPOL tax assessment 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 in the appeal. Additionally, with respect to administrative appeals of BPOL tax assessments, the current authorization for localities to resume collection action would be expanded to include situations where the commissioner of the revenue or the Tax Commissioner has determined that the appeal is frivolous.

With respect to appeals of BPOL tax, local business tax and local mobile property tax assessments, in situations where the locality is required to suspend collection activity because it has received a notice that the taxpayer intends to appeal the final local determination to the Tax Commissioner, this bill would authorize collection activity to resume if the taxpayer does not file an appeal with the Tax Commissioner within thirty days of filing the notice of intent to appeal.

Localities would be required to suspend collection activity regarding BPOL tax, local business tax and local mobile property tax assessments upon receipt of a notice that the taxpayer intends to appeal the determination of the Tax Commissioner to the circuit court. Collection activity would resume if the taxpayer does not file an appeal with the court within thirty days of filing the notice of intent to appeal. In order for collection activity to be suspended, the taxpayer would be required to (1) have exhausted its right to appeal the assessment administratively to the locality and the Tax Commissioner; (2) identify the amount of the tax that is in dispute; and (3) pay the portion of the tax that is not in dispute together with any penalty and interest then due with respect to the undisputed portion of the tax. Collection activity may resume if the court rules that (1) the appeal is frivolous; (2) collection would be jeopardized by delay; or (3) that suspension of collection would cause substantial economic hardship on the applicable locality. The court may require the taxpayer to pay the amount in dispute or provide surety.

Localities would be authorized to suspend payment of a refund of a BPOL tax, local business tax or local mobile property tax assessment to a taxpayer by serving on the taxpayer a notice of intent to appeal the Department's determination to the circuit court. The suspension of the obligation to make a refund would cease unless an application for judicial review is filed and served on the necessary parties within 30 days of the service of the notice of intent to appeal. In order for the refund to be suspended, the locality's

application for judicial review must identify with particularity that portion of the refund that is disputed. Payment of the refund would remain suspended while the court retains jurisdiction unless the court determines that the locality's application for judicial review is frivolous.

This bill would 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 and provide detailed procedures and deadlines for implementing final determinations issued by the Department. This bill would also clarify that a commissioner of the revenue or other local assessing officer must issue a written determination that includes the facts and arguments supporting his decision when responding to a taxpayer's administrative appeal. Additionally, this bill would clarify that the taxpayer must submit a copy of the written determination with any appeal to the Tax Commissioner.

This bill would shorten from two years to one year 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 an 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.

The local business tax administrative appeals process would be expanded to include local consumer utility taxes, except for the consumer utility tax on mobile telecommunications, where the amount in dispute exceeds \$2,500.

cc : Secretary of Finance

Date: 3/9/2005 JEM