

# DEPARTMENT OF TAXATION

## 2005 Fiscal Impact Statement

1. **Patron** L. Scott Lingamfelter

3. **Committee** Senate Finance

4. **Title** Local Taxes; Appeals

2. **Bill Number** HB 2679

**House of Origin:**

           **Introduced**

           **Substitute**

           **Engrossed**

**Second House:**

  X   **In Committee**

           **Substitute**

           **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 the BPOL tax, the local business tax, and 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. This bill would expand the local business tax administrative appeals process to include local consumer utility taxes 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:**

As the *Code* no longer refers to the Tax Commissioner as the "State Tax Commissioner," the following amendments are suggested:

Page 5, Line 256, After if the determination of the  
Strike: State

Page 5, Line 261, After determination of the  
Strike: State

As the Tax Commissioner is authorized to issue BPOL advisory opinions by *Va. Code* § 58.1-3701, the authorization provided by this bill is unnecessary and the following amendments are suggested:

Page 6, Line 329, After 8.  
Strike: Rulings and advisory opinions.

Page 6, line 330, After e  
Strike: a.

Page 6, Line 359, After the beginning of the line  
Strike: Lines 359, 360 and 361

**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 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 dispute 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, the 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. 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 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 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 and provide detailed procedures and deadlines for implementing final determinations issued by the Department.

This bill would 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 of an assessment of local business tax or the local mobile property tax. This bill would also clarify that the taxpayer must submit a copy of the written determination with any appeal to the Tax Commissioner.

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.

This bill would expand the local business tax administrative appeals process to include local consumer utility taxes where the amount in dispute exceeds \$2,500.

cc : Secretary of Finance

Date: 2/11/2005 JEM