

# DEPARTMENT OF TAXATION

## 2010 Fiscal Impact Statement

1. **Patron** Mark L. Cole

3. **Committee** House Finance

4. **Title** Local Taxes; Time to Appeal Assessments  
Extended

2. **Bill Number** HB 577

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

**5. Summary/Purpose:**

This bill would increase the time a taxpayer has for appealing the assessment of any local tax to the local commissioner of the revenue, from three years to five years from the last day of the tax year for which such assessment was made, or from one year to three years from the date of the assessment, whichever is later.

Under current law, any taxpayer assessed with any local tax, including tangible personal property, machinery and tools, merchants' capital, transient occupancy, food and beverage, admissions, or any local license tax has either three years from the last day of the tax year for which such assessment is made or one year from the date of the assessment, whichever is later, to apply to the commissioner of the revenue for a correction of the assessment.

The effective date of this bill is not specified.

**6. Fiscal Impact Estimates are:** Not Available (See Line 8).

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

**8. Fiscal implications:**

This bill would have no impact on state revenues. This bill would have an unknown impact on local revenues to the extent that taxpayers utilize the additional time provided by this bill to appeal local tax assessments and are successful.

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

All localities

**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.

Any person assessed by a commissioner of the revenue with any local tax, including but not limited to taxes on tangible personal property, machinery and tools, merchants' capital, transient occupancy, food and beverage, admissions, or the Business, Professional, and Occupational License ("BPOL") Tax who wishes to challenge the assessment currently has three years from the last day of the tax year for which such assessment is made, or one year from the date the assessment is made, whichever is later, to apply to the commissioner of the revenue for a correction of the assessment. These time limitations also apply to erroneous assessments of real estate if the error sought to be corrected was made by the commissioner of the revenue or is due to a factual error made by others in connection with conducting general reassessments. There is no statute of limitations for appealing an unpaid tangible personal property tax assessment, if the taxpayer can demonstrate by clear factual evidence that he was not subject to the tax for the year in question.

A taxpayer may 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 BPOL tax to the Department of Taxation if an administrative appeal to the commissioner of revenue or other taxing official has been denied. The BPOL administrative appeals process through the commissioner of the revenue and the Department of Taxation 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 of Taxation 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 taxpayer must file an appeal with the Tax Commissioner, and serve a copy on the commissioner of revenue or other assessing official within 90 days of the date of the determination of the commissioner of revenue.

### Proposal

This bill would increase the time a taxpayer has for appealing the assessment of any local tax assessed by a commissioner of the revenue, from three years to five years from the last day of the tax year for which such assessment was made, or from one year to three years from the date of the assessment, whichever is later.

The effective date of this bill is not specified.

## Similar Legislation

**House Bill 233 and Senate Bill 273** (identical) would: 1) authorize real estate assessors to require owners of affordable rental housing containing four or fewer residential units to furnish the assessor with statements of the income and expenses attributable over a specified period of time to each parcel of real estate; 2) lower the burden of proof to a preponderance of the evidence for a taxpayer seeking to show that the real estate assessor's valuation is erroneous; 3) prohibit assessors from reducing capitalization rates; and 4) provide that any determination of the assessment by the board on affordable renting housing would be deemed presumptively correct for the succeeding two years or the remainder of the assessment cycle, whichever occurs first, unless the assessor can demonstrate by clear and convincing evidence that a substantial change in value of the property has occurred. This presumption would apply in all localities, rather than solely in the City of Virginia Beach.

**House Bill 430** would provide 1) that the fair market value of certain affordable housing be determined using income production assessment methodology, based on the property's current use and restrictions and 2) that a locality's real property sales assessment ratio higher than 110% is prima facie proof that the locality has failed to assess at 100% of fair market value 3) additional requirements for real estate assessors; . 4) taxpayer's access to certain information related to assessments; and 5) additional requirements related to Boards of Equalization.

**House Bill 570** would change the burden of proof from the taxpayer to the assessor when a taxpayer appeals the assessment of real property to a Board of Equalization or to a circuit court.

cc : Secretary of Finance

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