DEPARTMENT OF TAXATION
2012 Fiscal Impact Statement

1. Patron Frank W. Wagner

2. Bill Number SB 549

House of Origin:
_____ **Introduced**
_____ **Substitute**
_____ **Engrossed**

Second House:
__X__ **In Committee**
_____ **Substitute**
_____ **Enrolled**

3. Committee House Finance

4. Title Machinery and Tools; Intangible Personal Property

5. Summary/Purpose:

This bill would provide that any person who invests, on or after January 1, 2013, in new machinery and tools that are segregated for local taxation would be eligible to apply for a Machinery and Tools Investment Grant for each of the first two years that the machinery and tools are placed in service. The amount of the grant would be equivalent to the amount of tax assessed and collected on the machinery and tools, less the amount of any rebate or grant received by the person from an industrial development authority or economic development authority for the machinery and tools in the same taxable year. However, if a locality raises the rate of tax imposed on machinery and tools on or after July 1, 2012, the amount of the grant would not exceed the amount of tax that would have been assessed using the tax rate in place on July 1, 2012. The bill would also establish the Machinery and Tools Investment Grant Fund ("Fund") to consist of such funds as may be appropriated and any gifts, grants, or donations. The Fund would be administered by the Department of Accounts. The bill would also require the Comptroller to develop guidelines implementing the provisions of the bill.

The bill would not become effective unless an appropriation of general funds effectuating the purposes of this bill is included in a general appropriations act passed by the 2012 Session of the General Assembly, which becomes law.

The effective date of this bill is not specified.

6. Budget amendment necessary: Yes.
ITEM(S): 261, Department of Accounts

7. Fiscal Impact Estimates are: Not available. (See Line 8.)

8. Fiscal implications:

Administrative Costs

If general funds are appropriated to establish the Machinery and Tools Investment Grant Fund, the Department of Accounts would incur administrative costs in the implementation of this bill. The administrative costs would depend on the amount of funds appropriated and the size of the grant program, but the Department of Accounts would require a minimum of $40,000 for 0.5 full-time employees to administer the grant.

Revenue Impact

This bill would have no impact on state revenues. To the extent that General Fund revenues are appropriated to the Machinery and Tools Investment Grant Fund, a reduction of an equal amount of General Fund support from other areas in the introduced budget would be required. According to the Auditor of Public Account's Comparative Report of Local Government Revenues and Expenditures, local revenues from the machinery and tools tax totaled $200.3 million in Fiscal Year 2008, $214.0 million in Fiscal Year 2009, and $221.2 million in Fiscal Year 2010.

9. Specific agency or political subdivisions affected:

All localities

10. Technical amendment necessary: Yes.

If the intent of the bill is for the Comptroller to verify the information relating to the grant, the following technical amendment is suggested:

Page 1, Line 39, After the
Strike: Authority
Insert: Comptroller

11. Other comments:

Machinery and Tools Tax

Generally, machinery and tools used in manufacturing, mining, water well drilling, processing or reprocessing, radio and television broadcasting, dairy, dry cleaning or a laundry business are segregated as a separate class of tangible personal property and are subject to local taxation only. The tax rate imposed on machinery and tools may not exceed that imposed on the general class of tangible personal property.

As established in a 1950 opinion of the Tax Commissioner, machinery and tools used in the manufacturing business are those machinery and tools (1) actually and directly used in manufacturing processes and (2) those machinery and tools used in the manufacturing business that are necessary in the particular manufacturing business and are used in connection with operation of machinery that is actually and directly used in manufacturing processes.

Intangible Personal Property

Under current law, intangible personal property is a separate class of property segregated for taxation by the Commonwealth. Localities are prohibited from taxing intangible personal property.

Certain personal property, while tangible in fact, has been designated as intangible and has been exempted from state and local taxation. For example, tangible personal property used in manufacturing, mining, water well drilling, radio or television broadcasting, dairy, dry cleaning or laundry businesses has been designated as exempt intangible personal property.

In the case of a manufacturing business, all personal property except machinery and tools, motor vehicles and delivery equipment used in the manufacturing business are considered to be intangible personal property. The 1950 opinion of the Tax Commissioner also established the Department's longstanding policy that idled machinery and tools are generally considered intangible personal property because they are not used in the manufacturing business. The opinion stated that in order to be considered "idle," machinery and tools must be in "prolonged and indefinite" disuse, not seasonal or occasional disuse, such that the machinery and tools are stored or storage of the machinery and tools would be proper if it were practicable to place the machinery and tools into storage. The opinion stated that, as a general rule, machinery and tools may be considered idle if they have been discontinued in use for as long a period as one year prior to the date they are returnable for taxation, provided there is no reasonable prospect that they will return to an active state within at least one year after such date.

<u>House Bill 2181 and Senate Bill 1151 (2007)</u>

House Bill 2181 and Senate Bill 1151 (*Acts of Assembly 2007*, Chapters 191 and 159), provided for the uniform statewide classification and taxation of idle machinery and tools on a prospective basis, effective January 1, 2007. The law codified the Department's administrative rulings holding that idle machinery and tools are to be classified as intangible personal property not subject to local taxation. The law also codified the Department's administrative rulings that machinery and tools are to be considered idled if they (1) have been discontinued in use continuously for at least one continuous year prior to any tax day, (2) are not in use on the tax day and (3) no reasonable prospect exists that such machinery and tools will be returned to use during the tax year.

The law also provided an alternate rule for determining that machinery and tools are to be considered idle. The alternate rule requires that on and after January 1, 2007, the machinery and tools (1) be specifically identified in writing by the taxpayer to the commissioner of the revenue or other assessing official on or before April 1 of the current tax year as machinery and tools that will be withdrawn from service before tax day of the next tax year, (2) are not in use on the tax day, and (3) have no reasonable prospect of being returned to use during the next tax year.

<u>Proposal</u>

This bill would provide that any person who invests, on or after January 1, 2013, in new machinery and tools that are segregated for local taxation would be eligible to apply for a Machinery and Tools Investment Grant for each of the first two years that the machinery and tools are placed in service. The amount of the grant would be equivalent to the amount of tax assessed and collected on the machinery and tools, less the amount of any rebate or grant received by the person from an industrial development authority or economic development authority for the machinery and tools in the same taxable year. However, if a locality raises the rate of tax imposed on machinery and tools on or after July 1, 2012, the amount of the grant would not exceed the amount of tax that would have been assessed using the tax rate in place on July 1, 2012. The bill would also establish the Machinery and Tools Investment Grant Fund ("Fund") to consist of such funds as may be appropriated and any gifts, grants, or donations. The Fund would be administered by the Department of Accounts.

A person with eligible machinery and tools would be required to apply to the Comptroller within 180 days of payment of the machinery and tools tax. Such application would include such information required by the Comptroller to verify the date the machinery and tools were placed in service, the amount of tax assessed and collected by the locality, and the amount of any rebate or grant received for the machinery and tools. Grants would be issued in the order that each completed application is received. If the eligible grants requested in a fiscal year exceeds the funds available, such grants would be paid in the next fiscal year in which funds are available. Additionally, the bill would require persons applying for a grant to first certify the machinery and tools with the local commissioner of revenue or assessing officer of the locality in which the machinery and tools are located. The bill would require the Comptroller to develop guidelines implementing the provisions of the bill. Such guidelines would be exempt from the Administrative Process Act.

The bill would not become effective unless an appropriation of general funds effectuating the purposes of this bill is included in a general appropriations act passed by the 2012 Session of the General Assembly, which becomes law.

The effective date of this bill is not specified.

Similar Legislation

House Bill 298 would create a separate class of property for purposes of the Machinery and Tools Tax for machinery and tools used directly in cleaning motor vehicles by a motor vehicle cleaning business.

cc : Secretary of Finance

Date: 2/17/2012 AM
DLAS File Name: SB549FE161