

DEPARTMENT OF TAXATION

2017 Fiscal Impact Statement

1. **Patron** Kathy J. Byron

3. **Committee** House Finance

4. **Title** Machinery and Tools Tax; Valuation; Appeal
of Certain Local Taxes

2. **Bill Number** HB 2104

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would permit the local commissioner of the revenue, for the purposes of the local Machinery and Tools Tax, to utilize any method that may reasonably be expected to determine actual fair market value of machinery and tools in addition to the specific methods required under current law. The bill would also require the commissioner of the revenue, upon request, to take into account the condition of the machinery and tools, all forms of depreciation, including obsolescence, and any other factor that is not adequately taken into account by the valuation method otherwise used.

The bill would require the commissioner of the revenue to provide to taxpayers, upon request, a description of his valuation methods, any adjustments that have been made to reflect the taxpayer's appraisal or written concerns, and the factual and legal bases upon which the commissioner relies for disagreeing with the taxpayer's qualified appraisal.

The bill would also authorize the Tax Commissioner to issue advisory written opinions in specific cases to interpret the law related to valuations involving independent appraisals of manufacturers' machinery and tools that are presented by the taxpayer to the commissioner of the revenue.

In appeals to the Tax Commissioner of the valuation of machinery and tools, the bill would permit the taxpayer to value the property by allocating the total value of all machinery and tools at a facility among individual items of property according to the percentage of the original cost that each such item of property bears to the total original cost of all of the property. The bill would also require the Tax Commissioner to make certain determinations and findings related to the appeal.

In appeals of tangible personal property tax on airplanes, boats, campers, recreational vehicles, and trailers; and on tangible business personal property, the bill would require the commissioner of the revenue to identify any statement of fact submitted by the taxpayer that the commissioner of the revenue believes to be incorrect.

Under current law, machinery and tools are valued by means of depreciated cost or a percentage or percentages of original total capitalized cost excluding capitalized interest.

Currently, the commissioner of the revenue is required to, upon written request of the taxpayer, consider any bona fide, independent appraisal. The Tax Commissioner has the authority to issue advisory written opinions in specific cases to interpret the provisions of § 58.1-3507 related to idle machinery and tools. The Tax Commissioner is also required to hear administrative appeals of determinations of local commissioners of revenue if the taxpayer files a timely written appeal.

The effective date of this bill is not specified.

- 6. Budget amendment necessary:** Yes.
Item 274, Department of Taxation

- 7. Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
[2016-17]	\$0	0	GF
[2017-18]	\$90,000	1	GF
[2018-19]	\$90,000	1	GF
[2019-20]	\$90,000	1	GF
[2020-21]	\$90,000	1	GF
[2021-22]	\$90,000	1	GF
[2022-23]	\$90,000	1	GF

- 8. Fiscal implications:**

Administrative Costs

This bill would require the Department of Taxation to hear additional valuation appeals of local Machinery and Tools Tax assessments, as well to issue Machinery and Tools advisory opinions on issues other than those regarding idle machinery and tools. The Department anticipates that it would require the hiring of an additional Tax Policy analyst. As the candidate would need to have appraisal expertise in addition to other tax expertise the annual cost could be \$90,000, including salary and benefits.

This bill would have an unknown negative impact on local administrative costs.

Revenue Impact

This bill would have an unknown impact on local revenues. This bill would have no impact on state revenues.

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

Department of Taxation; All localities

- 10. Technical amendment necessary:** No.

11. Other comments:

Machinery and Tools Tax

Article X, § 2 of the *Constitution of Virginia* provides that all assessments of real estate and tangible property are to be at their fair market value. Article X, § 1 of the *Constitution* provides that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the 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. According to *Virginia Local Tax Rates, 2015*, published by the Weldon Cooper Center for Public Service, 37 cities, 92 counties and 80 towns currently report imposing the Machinery and Tools Tax.

Under current law, localities are required to value machinery and tools, other than manufacturers' energy conservation equipment, by means of depreciated cost or a percentage or percentages of original total capitalized cost excluding capitalized interest. Most localities assess machinery and tools on the basis of original cost, fair market value, or book value. Frequently, a sliding scale is used, with the effective tax rate varying according to the age of the 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.

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.

Proposal

This bill would permit the local commissioner of the revenue to utilize any method that may reasonably be expected to determine actual fair market value of machinery and tools in addition to specific methods required under current law. The bill would also require the commissioner of the revenue, upon request, to take into account the condition of the machinery and tools, all forms of depreciation, including obsolescence, and any other factor that is not adequately taken into account by the valuation method otherwise used. The bill would require the commissioner of the revenue to provide to taxpayers, upon request, a description of his valuation methods, any adjustments that have been made to reflect the taxpayer's appraisal or written concerns, and the factual and legal bases upon which the commissioner relies for disagreeing with the taxpayer's qualified appraisal.

The bill would also authorize the Tax Commissioner to issue advisory written opinions in specific cases to interpret the law related to valuations involving independent appraisals of manufacturers' machinery and tools that are presented by the taxpayer to the commissioner of the revenue. In appeals to the Tax Commissioner of the valuation of machinery and tools, the bill would permit the taxpayer to value the property by allocating the total value of all machinery and tools at a facility among individual items of property according to the percentage of the original cost that each such item of property bears to the total original cost of all of the property. The bill would also require the Tax Commissioner to make certain determinations and findings related to the appeal, including:

1. Whether the locality's method for valuing and assessing machinery and tools is likely to estimate accurately fair market value and whether the locality has taken into account all forms of depreciation, including obsolescence, and other appropriate factors reasonably necessary to determine fair market value,
2. Whether the taxpayer has carried his burden to establish that the machinery and tools in question have been assessed at more than fair market value and the fair market value thereof,
3. The Tax Commissioner must state the facts and law in support of his determinations, including an analysis of any appraisals or other valuation information presented, and
4. Affirm the assessment if the taxpayer has not carried his burden to establish that the property has a fair market value less than assessed value, or if the taxpayer

has carried his burden, direct that the assessment be corrected by the commissioner of the revenue or other assessing official.

In appeals of tangible personal property tax on airplanes, boats, campers, recreational vehicles, and trailers; and on tangible business personal property, the bill would require the commissioner of the revenue to identify any statement of fact submitted by the taxpayer that the commissioner of the revenue believes to be incorrect.

The effective date of this bill is not specified.

Similar Legislation

Senate Bill 1205 would create a separate classification for commercial fishing vessels for the purposes of the tangible personal property tax.

House Bill 2193 would increase the maximum original cost of each item of tangible personal property that localities are required to allow business taxpayers to report in an aggregate summary of all such miscellaneous and incidental tangible personal property employed in a trade or business rather than reporting each item individually from \$250 to \$500.

cc : Secretary of Finance

Date: 1/23/2017 VB
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