

DEPARTMENT OF TAXATION

2011 Fiscal Impact Statement

1. **Patron** Benjamin L. Cline
3. **Committee** Passed by House and Senate
4. **Title** Tax Documents; Admissibility in Court

2. **Bill Number** HB 2145
House of Origin:
☐ Introduced
☐ Substitute
☐ Engrossed
- Second House:**
☐ In Committee
☐ Substitute
☒ Enrolled

5. Summary/Purpose:

This bill would provide that tax bulletins, guidelines, and other published documents, published by TAX are accorded judicial notice. Under Virginia case law, when a matter is judicially noted, it is taken as true without the offering of evidence by the party who should have ordinarily done so, but the opponent is not prevented from disputing the matter.

The bill would also require TAX to publish tax bulletins and guidelines and would include posting the documents on TAX's website as a permitted publication method instead of distribution to national and state tax services.

The provisions of this bill would be effective in proceedings commenced on and after July 1, 2011.

This is a Department of Taxation Bill.

6. **Budget amendment necessary:** No.

7. **No Fiscal Impact.** (See Line 8.)

8. **Fiscal implications:**

This bill would have no impact on state or local revenues.

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

Department of Taxation

10. **Technical amendment necessary:** No.

11. **Other comments:**

Background

The Department of Taxation is unique among state agencies as to the weight courts are expected to give administrative interpretations and policies. The general rule is that “the court shall take due account of the presumption of official regularity, the experience and specialized competence of the agency, and the purposes of the basic law under which the agency has acted.” *Va. Code* § 2.2-4027. However, statutes added in 1980, required TAX to publish its regulations, rulings and other documents, and gave TAX five years to do so. After 1985, courts were barred from admitting any evidence concerning its policies and interpretations of tax laws unless they were in the form of a regulation or a published ruling on an administrative appeal. Since the law was enacted in 1980, TAX has published over 7,000 rulings and other documents that provide policy guidance.

In proceedings relating to the interpretation or enforcement of the tax laws of the Commonwealth, *Va. Code* § 58.1-205 governs the effect of regulations, rulings, and administrative interpretations. Regulations are sustained unless unreasonable or plainly inconsistent with applicable provisions of law. Rulings in individual cases issued in conformity with *Va. Code* § 58.1-203 and published as provided in *Va. Code* § 58.1-204 are accorded judicial notice. *Williams v. Commonwealth*, 56 S.E.2d 537, 542 (1949) quoted from Wigmore, *Evidence* § 2567 (3d.ed. 1946) that when “a matter is judicially noted ... it is taken as true without the offering of evidence by the party who should have ordinarily done so ... But the *opponent is not prevented from disputing the matter, if he believes it disputable* [emphasis in original].” All other rulings and administrative interpretations may not be admitted into evidence and are accorded no weight, except where an assessment was made pursuant to any such ruling or interpretation. Where there is no assessment made pursuant to an administrative interpretation or ruling, the interpretation or ruling is not entitled to judicial notice

While no court has yet to hold that tax bulletins and guidelines are not admissible, a recent court case, *Comcast of Chesterfield County, Inc. v. Board of Supervisors of Chesterfield County* shows that the law is unclear regarding the admissibility of tax bulletins in court proceedings. On appeal in that case the locality argued that the tax bulletin was inadmissible as an “administrative interpretation” since tax bulletins are not rulings or regulations.

Proposal

This bill would provide that tax bulletins, guidelines, other published documents, and guidance documents published by TAX are accorded judicial notice. Under Virginia case law, when a matter is judicially noted, it is taken as true without the offering of evidence by the party who should have ordinarily done so, but the opponent is not prevented from disputing the matter.

The bill would also require TAX to publish tax bulletins and guidelines and would include posting the documents on TAX's website as a permitted publication method instead of distribution to national and state tax services and other publications.

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cc : Secretary of Finance

Date: 3/1/2011 AM
DLAS File Name: HB2145FER161