

DEPARTMENT OF TAXATION

2013 Fiscal Impact Statement

1. **Patron** Robert D. Orrock, Sr.

3. **Committee** House Finance

4. **Title** Tangible Personal Property Tax; Advertising Signs

2. **Bill Number** HB 1860

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would classify outdoor advertising signs adjacent to the rights-of-way of highways, as among the types of tangible personal property that fall under the separate classification for valuation purposes for property employed in a trade or business. The bill would also prohibit a locality from levying the real property tax on outdoor advertising signs and from considering such signs or any income generated by such signs, in assessing the value of real property or a leasehold or easement interest in such real property.

Under current law, tangible personal property is classified under a number of separate classifications for valuation purposes, which are not to be considered separate classes for rate purposes. Further, under current law, when an item of tangible personal property is determined to be a fixture, it is treated as real property for purposes of local taxation.

The provisions of this bill are effective for tax years beginning on or after January 1, 2013. This bill contains an emergency clause and is in force from its passage.

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

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

8. Fiscal implications:

This bill would have no impact on state revenues. To the extent that an outdoor advertising sign is deemed a fixture subject to real property tax under current law, this bill may shift revenue in localities from the real property tax to the tangible personal property tax, and may result in an unknown decrease or increase in local revenue. To the extent a locality currently classifies outdoor signs for valuation purposes under another classification, this bill may increase or decrease revenues, depending upon the values a locality assigns property within the separate class.

9. Specific agency or political subdivisions affected:

All localities

10. Technical amendment necessary: No.

11. Other comments:

Tangible Personal Property Tax

Under current law, tangible personal property is classified under a number of separate classifications for valuation purposes, which are not to be considered separate classes for rate purposes. Localities may value property within these separate classifications differently, so long as each method used is uniform within each category, is consistent with the specified requirements for each separate classification, and may reasonably be expected to determine actual fair market value as determined by the commissioner of the revenue or other assessing official.

There are currently eighteen separate classifications of tangible personal property for valuation purposes, which include:

- Farm animals, unless exempt under another classification;
- Farm machinery, unless exempt under another classification;
- Certain automobiles;
- Trucks of less than two tons;
- Trucks and other vehicles not separately classified;
- Manufactured homes;
- Antique motor vehicles that may be used for general transportation purposes;
- Taxicabs;
- Motor vehicles with specially designed equipment for use by the handicapped;
- Motorcycles, all-terrain vehicles and off-road motorcycles, campers and other recreational vehicles;
- Boats weighing under five tons and boat trailers;
- Boats or watercraft weighing five tons or more;
- Aircraft;
- Household goods and personal effects;
- Tangible personal property used in a research and development business;
- Programmable computer equipment and peripherals;
- All tangible personal property employed in a trade or business; and
- All other tangible personal property.

The law requires that tangible personal property employed in a trade or business must be valued by means of a percentage or percentages of original cost. Original cost means an asset's net price.

Tangible Personal Property vs. Real Property Designation

In the Virginia Supreme Court case, *Danville Holding Corp. v. Clement*, 178, Va. 223, 232, the Virginia Supreme Court set forth three general rules to be used in determining whether an article of tangible personal property is a fixture, and thus, considered a part of real estate for purposes of taxation, or remains personalty subject to tangible personal property taxation. These rules are:

- Annexation of the chattel to the realty, actual or constructive;
- Its adaptation to the use or purpose to which that part of the realty to which it is connected is appropriated; and
- The intention of the owner of the chattel to make it a permanent addition to the freehold.

The Court also noted that the intention of the party making the annexation is the paramount and controlling consideration.

In a 1989 opinion, the Virginia Attorney General's office addressed the issue of whether billboards may be subject to local real property taxes. The Attorney General recognized that where the land on which the billboard sits and the billboard are owned by the same individual or entity, the intent to permanently affix the billboard to the land is generally clear. However, if the owner of the land and the billboard are different persons, this determination is more difficult. In such case, the highest and best use standard may be used as an objective criterion in evaluating the true intent of the owners.

Outdoor Advertising Signs Regulated Under the *Code of Virginia*

Va. Code § 33.1-351 *et seq.* regulates outdoor advertising signs in areas adjacent to the rights-of-way of highways in Virginia. While the *Code* does not specifically identify the types of signs included under this list, there are a number of signs that are exempt from the *Code's* regulatory provisions if they are securely attached to real property or advertising structures. These include: 1) certain advertisements securely attached to a place of business or residence; 2) signs on farms that are erected or maintained by the owner or lessee of the farm; 3) certain "for sale or rent" signs; 4) official notices or advertisements posted by public or court officers; 5) certain danger or precautionary signs; 6) notices of telephone, telegraph, or transportation companies necessary to direct the public to such utility; 7) signs for the information of aviators as to location, direction and landings and conditions affecting safety; 8) certain signs bearing an announcement of any county, town, village, or city, or historic place or shrine; 9) certain signs denoting the distance or direction of a church, residence or place of business; 10) signs giving the name of the owner, lessee, or occupant of the premises; 11) advertisements and structures within the corporate limits of cities and towns; 12) certain historical markers; 13) highway markers and signs erected by the Commissioner or the Commonwealth Transportation Board; 14) signs erected upon property warning against hunting, fishing or trespassing; 15) signs relating to Red Cross Emergency Stations; 16) signs advertising agricultural or horticultural products produced by the person who erects and maintains the signs; 17) signs advertising the name, time, and place of county, district, or state fairs; 18) certain signs denoting the name of a civic service club or church location and the direction

for reaching; and 19) advertising signs or notices authorized by a county and securely affixed to a public transit passenger shelter owned by the county.

Proposal

This bill would classify outdoor advertising signs adjacent to the rights-of-way of highways as among the types of tangible personal property that fall under the separate classification for property employed in a trade or business, for purposes of the tangible personal property tax.

The bill would also prohibit a locality from levying the real property tax on outdoor advertising signs and from considering such signs or any income generated by such signs, in assessing the value of real property or a leasehold or easement interest in such real property.

The provisions of this bill are effective for tax years beginning on or after January 1, 2013. This bill contains an emergency clause and is in force from its passage.

Similar Legislation

Senate Bill 1236 is substantively identical to this bill, but would prohibit a locality from considering income attributable to such signs when assessing the value of any interest in such real property, as opposed to only when assessing the value of a leasehold or easement interest.

cc : Secretary of Finance

Date: 1/16/2013 KP
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