# Local Business Tax Appeals Process

Virginia
Department of Taxation

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Appeals and Rulings

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# LOCAL BUSINESS TAX APPEALS

## The Local Business Tax Appeals Process: Overview

The state administrative appeals process for local business taxes is available for the business, professional and occupational license (BPOL) tax, the business tangible personal property (BTPP) tax, the machinery and tools (M&T) tax and the merchants capital tax, the local mobile property tax and, effective July 1, 2005, the consumer utility in those instances where the contested tax is in excess of $2,500. It does NOT apply to the meals tax, the admissions tax, and other miscellaneous local business taxes. The state administrative appeals process for these taxes is not available. If a taxpayer wants to appeal a local assessment of these "other taxes," it may first appeal to the local assessing officer, and then to the circuit court in the jurisdiction where the assessment was made. It should be noted that in all cases the taxpayer may appeal a local tax assessment directly to the circuit court.

The Tax Department is also authorized to issue advisory opinions or rulings with respect to all local business taxes subject to the provisions of *Va. Code* §§ 58.1-3703.1 and 58.1-3983.1. Taxpayers may also request advisory opinions regarding these taxes from local assessing officers.

Significant legislation affecting the administrative appeals process was enacted in each of the 2002, 2003, 2004 and 2005 sessions of the General Assembly. Legislation enacted in the 2002 session substituted "appealable event" for "audit" in the BPOL statute. *See Va. Code* § 58.1-3703.1 A 5 a.[1] With this amendment, the process became more in line with the appeal process for the local business taxes as defined in *Va. Code* § 58.1-3983.1.

An "appealable event" means an increase in the assessment of a local license tax payable by a taxpayer, the denial of a refund, or the assessment of a local license tax where none previously was assessed, arising out of the local assessing official's: (i) examination of records, financial statements, books of account or other information for the purpose of determining the correctness of an assessment; (ii) determination regarding the rate or classification applicable to the licensable business; (iii) assessment of a local license tax when no return has been filed by the taxpayer; or (iv) denial of an application for correction of erroneous assessment attendant to the filing of an amended application for license.

Both the BPOL and the local business tax statutes were amended by the 2002 General Assembly to extend the time in which a taxpayer can appeal an assessment to the local

[1] Code sections referenced in this summary reflect the Code that will be in effect July 1, 2005. Chapter 927 of the *2005 Acts of Assembly* changed *Va. Code* §§ 58.1-3703.1 and 58.1-3983.1 in both form and substance.

assessing officer from 90 days to **one year** from the last day of the year for which the assessment was made, or within one year of the date of the assessment, whichever is later. Provision was also made to permit taxpayers that have filed appeals with local assessing officers and have not received a response within two years, to file an appeal directly to the Tax Commissioner. In these instances, the application for review is deemed to be denied, unless the Tax Commissioner finds that the absence of a final local determination was "caused by the willful failure or refusal of the Taxpayer to provide information requested and reasonably needed by the assessor to make his determination." *Va. Code* §§ 58.1-3703.1 A 5 e and 58.1-3983.1 B 6.

The 2003 legislation also affected the Department, in that it required the Tax Commissioner to issue a determination of BTPP, M&T and merchants capital tax appeals within 90 days of receipt of the appeal unless the taxpayer and the local assessing official are notified that a longer period will be required. If more time is needed to consider the appeal, an extension period for rendering such determination shall not exceed 60 days. Further extensions due to the failure of the affected parties to supply requested information are permitted. Prerequisite to such extensions, the Tax Commissioner must notify the taxpayer and the locality of the reasons that the extension is required. Former law did not dictate such requirements. This provision does not apply to the BPOL tax administrative appeals process.

Finally, under provisions of the 2003 legislation, the Tax Commissioner must decide whether or not he has jurisdiction to hear an appeal of a BTPP, M&T or merchants capital tax within 30 days of the application for correction of the local assessment. The Department will notify taxpayers within 30 days in those instances in which it determines it does not have jurisdiction. Only in those cases in which we find that the Department does not have jurisdiction will we issue a formal determination to that effect. This provision does not apply to the BPOL tax.

Legislation enacted in the 2004 General Assembly session authorized the Tax Commissioner to issue advisory opinions on questions related to local business taxes. This legislation also added the local mobile property tax to those taxes whose assessments are appealable to the Tax Commissioner. All of the 2002 and 2003 amendments to *Va. Code* § 58.1-3983.1 applied to the local mobile property tax effective July 1, 2004. The Tax Commissioner cannot respond to appeals regarding valuation of local mobile property, however.

Another significant of legislation enacted by the General Assembly in 2004 affecting the administrative appeals process for local business taxes grants local commissioners of the revenue the authority to compromise and settle disputed assessments that are within the statute of limitations. See *Va. Code* § 58.1-3994.

The 2005 General Assembly session enacted legislation that expanded the Department's authority to consider appeals of local business taxes to include appeals of consumer utility taxes where the amount in dispute is in excess of $2,500 under the provisions of *Va. Code* § 58.1-3983.1.

The 2005 legislation, Chapter 927, *2005 Acts of Assembly:*

- Requires the commissioner of the revenue or other local assessing officer to include the facts and arguments supporting his decision in his final local determination of a taxpayer's administrative appeal.
- Requires taxpayers to submit a copy of the written determination with any appeal to the Tax Commissioner.
- Shortens from two years to one year the time that must pass before a taxpayer may elect to treat a commissioner of the revenue's failure to issue a final determination on an appeal as a denial of the appeal so that the taxpayer may appeal the assessment to the Tax Commissioner absent a final determination from the commissioner of the revenue.
- Provides that collection activity is only suspended with respect to the amount of the assessment that is in dispute in the appeal.
- Provides authorization for collection activity to resume if the taxpayer does not file an appeal with the Tax Commissioner within thirty days of filing the notice of intent to appeal.
- Clarifies the roles of the commissioner of the revenue or other assessing officer and the treasurer or other collecting officer with respect to suspension of collection activities and provides detailed procedures and deadlines for implementing final determinations issued by the Department. Specifically, the taxpayer and the locality must comply with the determination of the Tax Commissioner within 30 days of a final state determination where the result is that a specified amount of taxes are due or a specified refund is due. In those cases that are remanded for a revision of the assessment, the taxpayer must supply the locality with the required information within 60 days of the determination and the localities have 60 days upon the receipt of new information for the Taxpayer in which to revise the assessment. The amount of tax due or the refund due must be paid within 30 days of the new assessment.
- Requires localities to suspend collection activity of local business tax assessments upon receipt of a notice that the taxpayer intends to appeal the determination of the Tax Commissioner to the circuit court. Prior to this, collection activity was not suspended during an appeal to the circuit court. This provision only affects the taxes enumerated in *Va. Code* §§ 58.1-3703.1 and 58.1-3983.1.
- Stipulates that in order for collection activity to be suspended during an appeal to the circuit court, the taxpayer must (1) have exhausted its right to appeal the assessment administratively to the locality and the Tax Commissioner; (2) identify the amount of the tax that is in dispute; and (3) pay the portion of the tax that is not in dispute together with any penalty and interest then due with respect to the undisputed portion of the tax. Collection activity may resume if the court rules that (1) the appeal is frivolous;(2) collection would be jeopardized by delay; or (3) that suspension of collection would cause substantial economic hardship on the locality.

## The Process – Local Level

The administrative appeals process begins at the local level. A taxpayer **may not** appeal an assessment to the Tax Commissioner until such time as the appeals process has been completed at the local level and a final determination as been issued by the local assessing official. Again, an exception has been made for those appeals that have languished at the local level for one year.

At the local level, the more complete the appeal to the local commissioner of the revenue or local assessing officer, the greater the likelihood that it will be resolved one way or another at the local level.  The application for review should contain the following:

1. Name and address of the taxpayer.
2. Taxpayer identification number.
3. A letter of power of attorney
4. A copy of the assessment.
5. The amount in dispute
6. Statement of why the assessment is erroneous.
    i. facts
    ii. issues
    iii. supporting authority
7. Statement of the relief the taxpayer is seeking.

**<u>Tips for Local Assessing Officer</u>**:

Make sure you have worked with the taxpayer to insure that you have a thorough understanding of taxpayer's business, and that the taxpayer has a clear understanding of the assessment, its basis, etc.

- Does the Taxpayer understand the classification system?  Do you **both** have a clear understanding of the role of substantiality in classifying a business, particularly a manufacturer?  Often we find that there are significant disagreements over classification.
- Does the Taxpayer understand the license tax?  There is often confusion over the difference between gross receipts and net income, as well as the concept of base year.
- Is the taxpayer operating multiple businesses?  If so are you licensing each business separately?
- Does the Taxpayer understand that if it chooses to be taxed at a single business rate, it must be at the highest rate, not the rate of the business that has the most volume?
- Have you carefully explained to the Taxpayer the appeals process, both at the local level and at the state level?  You are required by the statute to do so.  See *Va. Code* §§ 58.1-3703.1 and 58.1-3983.1.  Be sure to advise the taxpayer that collection activities on the amount in dispute are suspended upon receipt of an appeal at both the state and local level.  See *Va. Code* §§ 3703.1 and 58.1-3983.1.  Suspension of collection during the time in which a letter of intent has been filed is provided for statutorily in *Va. Code* § 58.1-3703.1.
- The biggest issue we have had concerning local business taxes thus far has been in the area of manufacturers.  Se P.D.

## **The Process – State Level**

The following applies primarily to the taxpayer but I think it is useful for localities to know the kinds of thing TAX is looking for when it addresses an appeal. After the Taxpayer receives a final local determination that it believes to be in part, or in whole, erroneous, it may, within 90 days of the determination, file an appeal with the Tax Commissioner. The 90-day period begins as of the date of the letter of final local determination. Upon determining that it would like to file an appeal, the taxpayer may file a "notice of intent" to appeal with the Tax Commissioner. The filing of this notice will stay the collection process until the actual appeal is filed. Again, this must occur within the 90-day period as specified in *Va. Code* §§ 58.1-3703.1 A 6 b and 58.1-3983.1 E. The filing of the notice of intent to appeal does **not** prolong the 90-day period during which the taxpayer must file the actual appeal.

The primary difference between a local appeal and an appeal to the Tax Commissioner of a local assessment is that at the state level, the taxpayer is challenging the final local determination, not the initial assessment. That is, at the state level the taxpayer should be emphasizing the legal argument in its disagreement with the local officials, whereas at the local level the taxpayer often challenges the assessment based upon a disagreement on the facts.

The taxpayer must provide the local assessing officer with copies of an appeal to the Tax Commissioner and of any notice of intent to appeal to the Tax Commissioner. One must always remember that absent compelling evidence, the assessment is presumed to be correct at both the state and local levels. *Va. Code* §§ 58.1-3703.1 A 5 b and 58.1-3983.1 B 4.

In your consultations with the taxpayers after the issuance of a final local determination, the taxpayer should be advised that any appeal should contain the following information. Absent such direction, the process at the state level is significantly delayed due to the lack of information. In a "perfect world " the taxpayer would be advised that it appeal to the to the Tax Commissioner should contain:

1. Name and address of the taxpayer

2. Taxpayer identification number

3. A letter of power of attorney. [We must have this in cases where the person filing the appeal is a representative of the business. It is not necessary in cases where the person representing the business is an employee.]

4. Copies of the assessment, the application for review, the final local determination, and **all material related to the local application for review** – pertinent correspondence between the taxpayer and local officials, copies of income tax returns – depending upon the issue, both federal and state. In cases where a final local determination has not been issued within the one year time frame, a complete presentation of all correspondence and a demonstration that the taxpayer has shown due diligence in providing the locality with the needed facts is necessary.

5. Statement of why the assessment is erroneous
    a. Facts – include a significantly detailed description of the taxpayer's business. This is especially important when classification is an issue. Remember SEC reports and Internet presentations of one's business are generally examined. If such information is provided with the application for correction, the review process is expedited.
    b. Issues – specify the point of contention and whether it is grounded in factual or legal differences, or both.
    c. Supporting authority - Statement of the relief the taxpayer is seeking. This should be clear and concise. Ultimately, this is what the determination will address.

**The Locality's Response**

Upon receipt of a copy of a taxpayer's appeal to the Tax Commissioner, a locality has 30 days in which to respond to the Taxpayer's appeal. In this response, the locality may more fully flush out both its interpretation of the taxpayer's position and the legal arguments supporting the local assessment**. Effective July 1,2005, localities must offer the taxpayer a clear rationale for its finding based upon the facts as presented and precedent as set by decisions of the Virginia Supreme Court and circuit courts, opinions of the Attorney General and rulings of the Tax Commissioner. See Chapter 927, 2005 *Acts of Assembly.***

All investigators/auditors, from the local tax commissioners and directors of finance, to field auditors and revenue investigators, should be aware of and utilize the Tax Policy library. This contains all rulings of the Tax Commissioner, many opinions of the Attorney General, the *Code of Virginia* and the Administrative Code; this site may be accessed through either the Department's web site at www.tax.virginia.gov, or directly at www.policylibrary.tax.virginia.gov.

**very important at this level**. A word of caution: to whatever extent possible, use Virginia cases as grounds for your determination. *The Daily Press, Inc.* v*. the City of Newport News*, 265 Va. 304, 576 S.E.2d 430, (2003) is a case in point. Ion that case, the City relied heavily on circuit court decisions in other states to support its argument. The taxpayer relied primarily on Virginia case law. The Taxpayer won. The analyst frequently consults relevant U.S. Supreme Court and other state court rulings when necessary, but the taxes at issue are LOCAL, therefore, Virginia rulings generally provide the best precedent. These would include rulings of the Virginia Supreme Court, Virginia circuit courts rulings, opinions of the Attorney General and rulings of the Tax Commissioner

**What Happens at TAX?**

An appeal to the Tax Commissioner and assigned to the Appeals and Rulings unit of the Office of Policy and Administration. The Executive Assistant first determines whether the aggrieved party has jurisdiction. The Executive Assistant of Appeals and Rulings reviews the case, and decides whether the Department has jurisdiction. He then assigns the case to the appropriate analyst – this applies to all taxes.

In those instances in which it is determined that the Department does not have jurisdiction, the appeal is referred back to the locality.

An acknowledgment letter is sent to all parties involved in the appeal. This letter serves localities with a notice that an appeal has been filled. It is incumbent upon the taxpayer to file a notice of appeal replete with the supporting documents it files with the Tax Commissioner.

In the case of either a request for an advisory opinion or an appeal, the analyst reviews the file, makes note of information that needs clarification or is lacking, and when necessary, contacts the taxpayer or taxpayer's representative to request additional information. In such instances, the taxpayer must supply the locality with copies of any additional information requested. Likewise, should the analyst request information from the locality, it is incumbent upon the locality to furnish copies of such information to the taxpayer or the taxpayer's representative.

The general rule of thumb for all tax appeals is "first in, first out." Obviously, complexities associated with given appeals may serve to alter the order in which the determinations are drafted and ultimately issued.

Upon completing a draft determination, the analyst forwards the draft for review. The review process is thorough and includes the Tax Commissioner. Occasionally a reviewer may make changes to the original draft. Once the draft is signed by the Tax Commissioner, it becomes an official "Public Document."

This process assures both the localities and the taxpayers receive a fair and complete review of the appeal.

**<u>What does the Analyst look for?</u>**

- A complete package: the appeal, the local application for review, which should include the final local determination, the assessment being appealed and all correspondence between locality and the taxpayer, when necessary, income tax returns, and when necessary a letter granting power of attorney to the taxpayer's representative. The analyst also checks to be sure the locality has been copied on the appeal.

- Does the Tax Commissioner have jurisdiction? If it is determined that the Tax Commissioner does not have jurisdiction, the taxpayer and the locality are notified within thirty days.

- Is the appeal perfected? If the appeal is incomplete, the Taxpayer is notified and reminded that it must copy the locality on any new material furnished to the Tax Commissioner.

- Is further information from the locality or the taxpayer necessary to a fair and complete analysis?

- Research: when the facts are stipulated, most of the research focuses on relevant rulings and case law and on the taxpayer's business. Is the taxpayer really a manufacturer? How is a multistate business structured? Does the taxpayer engage in more than one business?  Is the taxpayer truly engaged in research and development? The avenues of investigation vary with the nature of the case.

**Suggestions from the State Tax Policy Analyst to the Locality**

**DO:**

- Make sure that you and the taxpayer are in agreement as to the relevant facts.  If the facts are stipulated to by both parties, an appeal will only address the underlying legal questions.  This is the Tax Department's role in the process.  In most cases where the parties are in agreement on the facts, the appeals process at the State level works more rapidly.

- Work with the taxpayer.  Remember that the average citizen's primary interface with the government is through the local "taxman."  Making that a positive experience is important to a democracy and goverance in general.  A vast majority of our citizens want to comply – often they simply do not understand the rules.  TAX's motto is to treat all citizens with courtesy and respect.  Please incorporate this in your dealings with taxpayers.

- Be familiar with recent rulings of the Tax Commissioner, opinions of the Attorney General and court cases before rendering a final local determination.  While such rulings are made on the basis of the specific facts of the case at hand, they nevertheless offer guideposts for future decisions.

- Respond to a taxpayer's appeal within thirty days with any and all information that would butress the locality's position. This would include facts the taxpayer failed to include in its appeal to the Tax Commissioner and legal arguments used by the locality in making its determination.

- Inform the Tax Commissioner or the analyst if you have continued discussions with the taxpayer after it has filed an appeal with the Tax Commissioner.  Such negotiations are desirable, but TAX cannot keep a case open while it is open at the local level

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**Reminders**

Response to a Final State Determination

As mentioned above, effective July 1, 2005, both localities and taxpayer's are statutorily mandated to "promptly" comply with a ruling of the Tax Commissioner within a specified time frame

1) If the determination of the Tax Commissioner sets forth a specific amount of tax or refund due, treasurer or other official responsible for collection **must** issue a bill or a refund to the taxpayer for such amount due, together with interest accrued and penalty within 30 days of the date of the determination of the Tax Commissioner.

2) If the determination of the Tax Commissioner does not set forth a specific amount of tax or refund due, or requires the commissioner of the revenue to undertake a new or revised assessment that will result in an obligation to pay a tax that has not previously been paid in full, or a refund of taxes previously paid, the commissioner of the revenue must provide the taxpayer with a new or revised assessment within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required by the Tax Commissioner's determination, whichever is later. The treasurer or other official responsible for collection must issue a bill, or a refund, to the taxpayer for the amount due, together with interest accrued and penalty, within 30 days of the date of the new assessment.

Advisory Opinions of the Virginia Department of Taxation

The Commissioner of the Virginia Department of Taxation also has the authority to issue written advisory opinions that interpret the BPOL statutes and Guidelines and the local business tax statutes. *Va. Code* §§ 58.1-3701 and 58.1-3983.1. The Tax Commissioner is not required to interpret any local ordinances. Examples of the issues on which the Commissioner may render advisory opinions include: (1) interpretation of changes made to the BPOL statutes; (2) questions, the answers to which depend upon both state law and the laws of a locality; (3) situations in which two jurisdictions are attempting to tax the same gross receipts; (4) classifications of businesses under the BPOL enabling legislation; (5) whether a business qualifies as a manufacturer under existing court decisions; (6) whether a business qualifies for deductions, exclusions, or reduced rates of tax contained within the BPOL enabling legislation; (7) situs rules contained within the BPOL enabling legislation; questions of valuation and situs for BTPP and M&T tax purposes, and (8) whether changes made to a local statute conform with required changes under recent Virginia law.

**Application for Correction of Local Taxes before the Circuit Court**.

Limitations Period. The application for correction must be filed within the later of: (i) three years from the last day of the tax year for which the assessment is made, ii) one year from the date of the assessment, iii) one year from the date of the Virginia Tax Commissioner's final determination, or iv) one year from the local Commissioner of the Revenue's final determination. Va. Code § 58.1-3984. Effective July 1, 2005, collection activity must be suspended while a taxpayer appeals a determination of the Tax Commissioner to the circuit court provided the conditions outlined above are met.

Appeals to Virginia Supreme Court. Either the local assessing official or the taxpayer may appeal a decision of the Circuit Court to the Virginia Supreme Court. Va. Code § 58.1-3992.

## Policy Library

The Department's Policy Library is a terrific research tool for public use. The following Policy document types are available in the Policy Library:

- **Tax Code of Virginia (Title 58.1 and other tax-related provisions of the VA Code**) – contains most of the laws pertaining to taxes administered by the Department of Taxation.
- **Virginia Tax Administrative Code (Regulations)** - published regulations that expand on and clarify the provisions of the *Code of Virginia*. Tax regulations are published as part of the *Virginia Administrative Code*, under *Title 23, Taxation*.
- **Legislative Summaries** - a summary of state and local tax legislation passed by the General Assembly in a specific tax year.
- **Rulings of the Tax Commissioner** - rulings issued in response to specific inquiries or appeals from taxpayers. These rulings are usually made in response to appeals filed under the provisions of Virginia Code §58.1-1821. They are the Tax Commissioner's interpretation of the law and; therefore, become tax policy with the force of law.
- **Tax Bulletins** - notices issued by the department to explain law changes, clarify existing law or policy, or publish information such as current interest rates. The bulletins are posted on the agency's web page, circulated within the agency and mailed to the local Commissioners of the Revenue, media organizations and tax practitioners.
- **Attorney General Opinions** –official opinions on the interpretation and administration of provisions of the *Code of Virginia* issued by the Attorney General in response to inquiries from state and local government officials.

The Policy Library provides customers with the ability to:

- Browse for documents
- Search for specific documents
- Branch to related web sites

The browse feature of the Policy Library allows customers to locate a document by looking through a sorted list of documents. Documents are sorted by document type, tax type and topic.
The Policy Library is located at www.policylibrary.tax.virginia.gov.