

# VAAO-PERSONAL PROPERTY


APPEALS, CORRECTIONS, STATUE OF  
LIMITATIONS AND AMENDED RETURNS

# APPEALS

- In 2000 the administrative review process for local business taxes began. They were written to conform as closely as possible to the 1997 BPOL appeals.
- In 2005 they were updated to reflect changes of the General Assembly in 02-04 which included the authority of the Department of Taxation to be expanded to hear local tax appeals to include assessments of the tangible personal property tax on airplanes, boats, campers, recreational vehicles and trailers (the “local mobile property tax”) and consumer utility where contested tax is in excess of \$2500
- Virginia Code 58.1-3983.1 authorizes the Department to issue final determinations on appeals filed by business taxpayers of assessments on
- **Local business tax**” means machinery and tools tax, business tangible personal property tax (including, without limitation, computer equipment), merchant's capital tax, and a consumer utility tax where the amount in dispute exceeds \$2,500 other than the tax collected on mobile telecommunication service as defined in § [58.1-3812](#).
- **“Local mobile property tax”** means the tangible personal property tax on airplanes, boats, campers, recreational vehicles, and trailers.
- Other local taxes, such as food and beverage, admissions can be appealed to the Commissioner of the Revenue but there is no review provided by the TAX.

# Who can Appeal

- Any person, firm, corporation who has received an assessment by the local taxing officer for local business tax or local mobile property tax may appeal to the local office.
- Timeline to appeal is one year from date of assessment or within one year from the last day of the tax year, which is later.
- Assessment issued in April 2011 for 2008 tax year can be appealed by April 2012.



Assessment=a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to written notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. A return filed or tax paid before the last day prescribed by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be. An assessment includes a return filed on behalf of the taxpayer by the local assessing officer.

# Local Appeal

- Appeal should :
  - Identify Taxpayer
  - Tax Period covered
  - Amount in dispute
  - Remedy sought
  - alleged error in the assessment
  - Grounds upon which taxpayer relies and other facts relevant to the appeal

# Process at Local Level

- The local officer can hold a conference, request additional documentation, further audit, or whatever is needed to issue a final a local determination
- The final local determination from the local level has to be issued within **90 days** after appeal is filed.
- This determination has to provide the taxpayer right to file an administrative appeal to Tax Commissioner

# Process at Local Level

- If an appeal to local assessing officer has been pending for more than one year without issuance of final local determination taxpayer may upon written notice to the local officer 30 days written notice to treat the application as denied and appeal assessment to the Tax Commissioner.

# Collection Activity

- Taxpayers intending to appeal an assessment should immediately provide a written Notice of Intent to Appeal to the local assessing officer to stop collection activity or a complete application for review to local officer. However interest does accrue.
- After final local determination issued collection activity can resume.

# State Level Process

- Taxpayer can appeal the final local determination to Tax Commissioner within 90 days of the date of the determination.
- The appeal shall include a copy of the written local final determination of the commissioner of the revenue that is challenged, together with a statement of facts and grounds taxpayer relies on.

# State Level Process

- Tax Commissioner has 30 days to determine if he jurisdiction to hear the appeal
- A final state determination shall be issued within 90 days of the appeal unless local assessing officer and taxpayer notified that a longer period needed which is not to exceed 60 days. Any extension after this based on documentation not provided shall be issued 60 days after provided.



# Next Step

Following the issuance of a state final determination the taxpayer or the local assessing officer may apply to the circuit court for judicial review of the determination. In such proceeding the burden shall be on the party challenging the determination of the determination.

# Local Business Tax Appeals

- The Department of Tax on their website has under public notices has current and prior appeals.
- In June there were 5 posted
- Based on the website there has been 51 prior tax appeals issued on local business and mobile property tax.

# Corrections

- Virginia Code 58.1-3980 provides that any person disagrees with a local assessment of local taxes may within 3 years from the last day of the tax year for which such assessment is made or within one year from the date of the assessment, whichever is later, apply to the Commissioner of the Revenue or such other official who the made the assessment for a correction.

# Corrections

- Under this procedure if the taxpayer disagrees in whole or part with the local officers determination the taxpayer may then take their grievance to circuit court. They do not have to go the state level.
- Under 58.1-3983.1 this option is also available at any time.

# Corrections

- In PD 11-44 the Tax Commissioner has ruled that a locality's denial of an amended return requesting a refund fund under 58.1-3980 constitutes an assessment in which the taxpayer would be eligible to file under 58.1-3983.1
- An unpaid tangible personal property tax assessment may be appealed to the Commissioner of the Revenue or other assessing official at any time during which such assessment is collectible under 58.1-3940, provided the taxpayer can demonstrate by clear factual evidence that he was not subject to the tax for the year in question.

# Corrections

In the case of an erroneous assessment that has been satisfied in whole or in part through an involuntary payment an appeal for refund to the assessing official must be made within one year from the date of the involuntary payment.

In Hampton we had an AG opinion where a taxpayer was assessed and billed in November 1999 for 1998 taxes, which were reduced in November 2002 and paid in March 2003. The date of assessment is November 1999 and the taxpayer can seek judicial review until March 2004

- Code of Virginia **58.1-3109. Duties of commissioners as to personal property, income and licenses. — Each commissioner of the revenue shall:**
  6. Require taxpayers or their agents or any person, firm or officer of a company or corporation to furnish information relating to tangible or intangible personal property, income or license taxes of any and all taxpayers; and require such persons to furnish access to books of account or other papers and records for the purpose of verifying the tax returns of such taxpayers and procuring the information necessary to make a complete assessment of any taxpayer's tangible and intangible personal property, and license taxes for **the current tax year and the three preceding tax years;**



**In 2011 Commissioners of the  
Revenue may assess**

**Current Tax Year 2011**

**Plus Three preceding tax  
years:**

**2008, 2009, 2010**

**In January 2012 2008 will drop  
off**