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January 31, 2024

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VIA Electronic Submission @ MyMGA

Maryland General Assembly
House Ways and Means Committee
Chair, Delegate Vanessa E. Atterbeary
Vice Chair, Delegate Jheanelle K. Wilkins
Room 131
House Office Building
Annapolis, MD 21401

RE: HB0174/SB0279 – Property Tax Assessment – Appeals to
Maryland Tax Court – Filing Fee - **OPPOSE**

Dear Chair Atterbeary, Vice Chair Wilkins, and Members of the House Ways and Means Committee,

Thank you for the opportunity to offer testimony in OPPOSITION to House Bill 0174/Senate Bill 0279, which would require a taxpayer, when filing an appeal to the Maryland Tax Court of a property tax assessment for income-producing property valued at greater than \$5 million, to pay a non-refundable \$100 fee to the Maryland Tax Court.

My name is Shawn Eskow, and I am a Principal in the Property Tax Practice at Ryan, LLC, which represents commercial and residential property owners in ensuring their properties are fairly valued and properly classified. I am an attorney licensed in Maryland, Virginia, and Washington, D.C., a licensed Certified Public Accountant in Virginia, and a life-long Maryland resident. My professional practice includes providing real and personal property tax consulting services, focused on Maryland property owners.

As explained below, we are submitting this testimony to OPPOSE HB0174/SB0279 for the following reasons:

- The legislation violates the Maryland Constitution’s guarantee of uniform rules in the assessment and classification of property.
- The legislation will unduly burden commercial and industrial property owners and impair their access to justice in property tax appeals.
- The legislation imposes a mandatory collection function on already limited government resources.

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- The legislation fails to address common issues that arise in commercial and industrial property tax appeals that could further exacerbate the burdens the legislation imposes on property owners.

HB0174/SB0279 would require owners of commercial or industrial property assessed at more than \$5 million to pay a filing fee of \$100 to challenge the assessed value or classification of their properties before the Maryland Tax Court. These fees are only imposed on owners of income-producing property assessed at more than \$5 million and appear to be a targeted attempt to discourage or prevent legitimate property tax appeals from certain classes of taxpayers.

HB0174/SB0279 violates the Maryland Constitution

As an initial matter, HB0174/SB0279 contains a fatal constitutional flaw: it violates the Maryland Constitution, specifically Article 15 of the Declaration of Rights, which states “that the General Assembly shall, *by uniform rules*, provide for the separate assessment, classification and sub-classification of land, improvements on land and personal property.” (emphasis added). The Constitution does not permit commercial or industrial property to be assessed or classified using rules or imposing constraints different from those governing the assessment or classification of residential or other classes of property. Imposing a fee that only applies to commercial or industrial property owners violates this guarantee of uniformity in property tax assessment and classification.

HB0174/SB0279 imposes undue burdens on property owners with legitimate grievances

In addition to the constitutional infirmity, HB0174/SB0279 unduly burdens commercial and industrial property owners. It is important to remember that the purpose of providing a right to a tax appeal is to arrive at the fair market value of a property, so that taxpayers are paying an appropriate level of tax, not more than their fair legal share. To charge a fee to access the forum where one can exercise this right – on top of the time-intensive process of pursuing appeals to begin with – is unduly and overly burdensome.

The imposition of fees for access to property tax appeals creates a barrier to justice for taxpayers seeking to correct what may be ministerial errors in property tax assessments. Currently, there are no fees for taxpayers seeking to appeal their property tax assessments, including at the Maryland Tax Court, which hears appeals in many types of tax matters other than property tax. Although it is reasonable to expect ministerial errors to be corrected without the need for an appeal to the Tax Court, in our experience, that is not always the case.

This barrier to justice is likely to have a disproportionate impact on small business owners who own property assessed at more than \$5 million but are already saddled with substantial debt related to their ownership. The fees proposed in HB0174/SB0279 are likely to put the cost of achieving a fair assessment value for small commercial or industrial property owners out of reach. In addition, the more than \$5 million threshold at which these fees would be triggered is arbitrary and may not reflect an owner’s true interest in the property or the property’s actual market value.

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In a Senate Budget and Taxation Committee hearing on the draft bill held on January 17, 2024, SDAT's Director, Michael Higgs, testified that the intent of the bill is to disincentivize the filing of appeals to the Maryland Tax Court, which is the third level of appeal in Maryland's property tax appeal system. Mr. Higgs was unprepared to provide the Committee with data regarding the number of appeals filed at any level of Maryland's three levels of appeal, the numbers of appeals that result in an adjustment in the taxpayer's favor, and the number of appeals that are withdrawn. Mr. Higgs's testimony confirmed that the SDAT's goal is to hamper access to justice for one group of property tax taxpayers. Furthermore, it is not clear that the proposed fee bears any rational relationship to the intent of the legislation or would have any effect in resolving the problem SDAT perceives in allowing taxpayers access to a forum in which they may appeal their property tax assessments.

HB0174/SB0279 imposes unfunded burdens on the Tax Court

The proposed fees in HB0174/SB0279 may not be waived by the Tax Court, and thus the law mandates the Tax Court to manage and staff a collection function, which may exacerbate current staffing challenges and require the procurement of banking services contracts, among others. For the Tax Court, which handles few commercial and industrial property tax appeals, the costs associated with implementing the legislation will further burden limited government resources and may be prohibitive. If the legislation were motivated by a desire to ease the burdens on already stretched resources at the Tax Court, the legislation would miss the mark by creating a new set of tasks and processes that must be carried out to collect the fees imposed.

HB0174/SB0279 fails to consider the practical realities of property tax appeals

The legislation fails to address common issues that arise in commercial and industrial property tax appeals that could further exacerbate the burdens the legislation imposes on property owners. For example, it is unclear if the fee would be imposed per parcel or per operating unit. For a property that consists of multiple parcels, such as a shopping center, the cost to appeal could be significant.

Thank you again for the opportunity to testify before the Committee, and I urge the Committee not to take up HB0174/SB0279. I will make myself available at any members' convenience to answer any questions.

Sincerely,



Shawn Eskow
Ryan, LLC