

HB0896-BT_MACo_SUP.pdf

Uploaded by: Kevin Kinnally

Position: FAV



House Bill 896

Property Tax Appeals - Commercial and Industrial Property - Fees

MACo Position: **SUPPORT**

To: Budget and Taxation Committee

Date: March 30, 2023

From: Kevin Kinnally

The Maryland Association of Counties (MACo) **SUPPORTS** HB 896. This bill applies reasonable fees for commercial and industrial property tax appeals under specified circumstances. This bill makes meaningful progress toward eliminating a means of tax evasion that benefits commercial and industrial property owners at the expense of other property owners and taxpayers.

Under current law, the Maryland State Department of Assessments and Taxation sets the value of each parcel of real property every three years through an assessment process. Unlike commercial and industrial property owners, county governments cannot file “out-of-cycle” appeals – which are appeals in the two years in which a property is not reassessed.

The bill requires owners of substantial commercial or industrial properties to have “skin in the game” when appealing property tax assessments. This could help reduce the barrage of frivolous assessment appeals. Baseless appeals waste valuable time and resources and jeopardize limited local funds for schools, housing, public safety, public health, and other essential services.

Under the bill, a \$50 fee must accompany property tax appeals to Maryland Property Tax Assessment Appeals Boards for commercial or industrial properties with an assessed value greater than \$1 million. In addition, a \$100 fee must accompany property tax appeals to the Maryland Tax Court for commercial or industrial properties with an assessed value of at least \$1 million.

By requiring reasonable fees for substantial commercial or industrial property tax appeals, HB 896 ensures a more equitable system for all taxpayers. Accordingly, MACo urges the Committee to issue a **FAVORABLE** report on HB 896.

Bushel Testimony SB 0885.pdf

Uploaded by: Alexander Bushel

Position: UNF

LAW OFFICES OF
ABRAMOFF BUSHEL LLC
QUARRY LAKE AT GREENSPRING
2650 QUARRY LAKE DRIVE, SUITE 320
BALTIMORE, MARYLAND 21209

—
WWW.ABRBUS.COM
(410) 583-1400

March 30, 2023

IN OPPOSITION TO SB 0885

Budget and Taxation Committee
Maryland Senate
West Miller Senate Building, Room 3
Annapolis, Maryland 21401

RE: Senate Bill 885 - An Act concerning the Property Tax Appeals – Commercial and Industrial Property - Fees

Dear Members of the Committee:

I respectfully submit this summary letter in conjunction with my testimony on March 30, 2023 in opposition to Senate Bill 885.

Personal Background

My name is Alexander H. Bushel. I practice in law Baltimore at Abramoff Bushel LLC. Our firm's practice consists mainly of real property tax assessment appeals. I have been a member of the Maryland Bar since 2009 and the Kentucky Bar since 2008. My focus has been property tax since 2010 and I have served on the Maryland State Bar Association's Tax Section Council. We represent taxpayers from every county and Baltimore City who own all types of properties. This representation includes handling appeals at the assessor level with the Department of Assessments & Taxation (SDAT), the Property Tax Assessment Appeal Boards (PTAABs) in each county, the Maryland Tax Court, and beyond to our State's appellate courts.

The Bill

This Bill proposes to set filing fees for certain properties to the Property Tax Assessment Appeal Boards and to the Maryland Tax Court. I am opposing this bill for three main reasons: 1) it was drafted after the start of the Session without an understanding of the practical realities of these appeals and leads to unfair burdens and unanswered questions, 2) the fees are not designed to recoup costs of the agencies hearing the appeals, rather to discourage certain taxpayers from exercising their appeal rights and this is inappropriate, and 3) it does nothing to address the real

problem facing property tax assessments and appeals in this State, which is the lack of funding to SDAT that has caused a severe staffing shortage of assessing personnel.

Issues Created by the Drafting – The Bill sets filing fees for assessment appeals of \$50 to the PTAAB and \$100 to the Maryland Tax Court for “Commercial and Industrial Property” assessed for \$1,000,000 or more. This creates numerous unfair burdens that were likely not anticipated.

First, many commercial properties consist of multiple tax parcels. A shopping center may be comprised of ten (10) tax parcels assessed for \$1,000,000 each. As written, this bill would require an outlandish filing fee of \$500 (10 parcels x \$50), whereas a competing property across the street that happens to be platted as one (1) parcel would only pay \$50 to the PTAAB. *This would have been taken care of for the most part by the supposed amendment proposed at the House hearing increasing the assessment limit to \$5,000,000 or more from \$1,000,000, but that is missing from the current proposed bill.*

Second, last year we had an Assessment Office accidentally issue thirty-two (32) Final Notices of Assessment (official notice of final decision from first-level appeal) without holding hearings. The taxpayers’ legal remedy was to appeal to the PTAAB to preserve their rights. When in front of the Board, SDAT requested that the cases be remanded back to them so that first-level hearings could be held. Why should the taxpayers have to pay \$1,600 (32 parcels x \$50) in filing fees to the PTAAB to rectify this error? This is not an isolated incident. Often first-level appeals are finalized without a statutorily required hearing. This is especially true in the larger counties where SDAT staffing shortages are most acute and mistakes more likely to occur. Nor would the “remand” meet the definition of “the Board chang[ing] the value or classification of the property in the Appellant’s favor as the result of the Appeal.” Thus, the \$1,600 filing fee would not be refunded! Finally, what about settlements? A great number of these cases result in a change in the Appellant’s favor, but they are settled before the hearing. It should be made clear that the fees are refunded in that circumstance.

The Bill Arbitrarily Treats Certain Properties Differently from Others and Does Not Consider the Added Burden on the PTAABs or the Maryland Tax Court – In principle, the purpose of filing fees is not to deter access to justice and courts, especially for questioning the judgment of an administrative agency, but for the purpose of recouping reasonable costs incurred in processing and opening matters. The Tax Court has long held a policy that it does not seek to charge fees and restrict access of taxpayers. This legislation also begs the question of why is the Tax Court not charging a filing fee for income tax, sales and use tax, estate tax, admission and amusement tax, and other tax appeals? What is more costly about handling an assessment appeal on a commercial property?

The fees only apply to “Commercial and Industrial Property” assessed for over \$1,000,000. There is no rational basis for applying this fee to only these properties, much less other taxes. A residential appeal and a commercial appeal take the same amount of resources for the PTAAB or Tax Court to accept and hear. As testified to in the Ways and Means hearing, the Bill’s genesis was from a hearing this session where an employee of SDAT complained about taxpayers not showing up for their hearings. The statistics presented at that hearing do not make sense. Moreover, neither the Tax Court nor the PTAAB was consulted about this legislation, so such statistics as relate to them are purely anecdotal.

Neither agency directly affected, the Tax Court nor the PTAAB, were approached about this legislation before it was introduced. Both agencies are very small, and the collection of fees will be a significant new responsibility. Certainly, the PTAAB clerks were not asked about the logistics involved in this. The feedback that I have heard is that they are not happy about the prospect of the increase in administrative responsibilities that will come with handling funds in the form of filing fees. It goes without saying that they are not being provided with a pay raise in this legislation for the increased workload.

Article 15 of Maryland’s Declaration of Rights requires “that the General Assembly shall, by uniform rules, provide for the separate assessment of, classification, and sub-classification of land, improvements on land and personal property.” There is no separate classification between residential and commercial/industrial property. Moreover, the term “commercial and industrial property” is not even defined in the Tax-Property Article. How will “mixed” properties be treated? Such properties are usually a mix of first-floor retail and apartments upstairs.

Lack of Funding for SDAT is Causing a Serious Staffing Shortage -This Bill attempts to treat a symptom, not the underlying illness. For about a decade now, SDAT has struggled to attract and retain assessors. The principal reason is that assessor salaries are woefully uncompetitive. SDAT has lost talented young (and not so young) assessors to neighboring jurisdictions like the District and Virginia that pay substantially more. I have seen assessors from the Eastern Shore, Charles County, Washington County, Howard County, Anne Arundel County, and, of course, Montgomery and Prince George’s Counties, willing to take on a much longer commute to accept jobs outside of their home state. The salary differences are so great that even those with a significant amount of time with the State, and thus time toward a pension, find the salary too good to pass up.

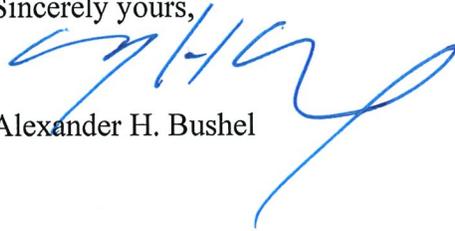
SDAT, like many government agencies, needs institutional knowledge to function. With SDAT having trouble convincing the next generation to pursue a career with the Department, we are in danger of losing much of this knowledge base. Typically, the longer a person works in a field, the exponentially better they get at the job. SDAT has historically been fortunate to keep staff for decades. These assessors know their job inside and out and pass that knowledge down to new staff whom they train. This cycle is being broken now with newer hires being siphoned away to other jurisdictions or careers.

With the lack of staffing, it is near impossible for many SDAT offices to devote the appropriate time to assessing duties and first-level appeals. The appeal process to the PTAABs and Tax Court provides a much needed back stop for taxpayers and, while I do not speak for them, I think for assessors too. The best way to reduce the amount of assessment appeals going to the Boards and to the Tax Court is to provide SDAT the resources it needs to perform its statutory duties, which the General Assembly has already tasked them with. Instead, this Bill offers SDAT a band aid to stanch the bleeding of a gushing wound, while creating a headache for other agencies and taxpayers.

Conclusion

This Bill was filed after the start of the Session. There has not been adequate time to explore practical issues with it nor have gathered input from the agencies directly affected (the Maryland Tax Court and PTAAB). Therefore, I respectfully oppose Senate Bill 885.

Sincerely yours,


Alexander H. Bushel

Opposition to SB0885.HB0896 - FINAL - 2023.03.29 (

Uploaded by: Argi O'Leary

Position: UNF



1000 Wilson Boulevard
Suite 2100
Arlington, Virginia 22209
Direct 571.481.9427
Mobile 240.426.2027

March 29, 2023

www.ryan.com

VIA Electronic Submission @ MyMGA

Maryland General Assembly
Senate Budget and Taxation Committee
Chair, Senator Guy Guzzone
Vice Chair, Senator Jim Rosapepe
3 West
Miller Senate Office Building
Annapolis, MD 21401

RE: SB0885 (HB0896) – Property Tax Appeals – Commercial and
Industrial Property – Fees - **OPPOSE**

Dear Chair Guzzone, Vice Chair Rosapepe, and Members of the Senate Budget and Taxation Committee,

Thank you for the opportunity to offer testimony regarding Senate Bill 0885 (House Bill 0896), which would impose mandatory filing fees on certain owners of commercial or industrial property exercising their rights to determine the fair value or proper classification of their properties before a Property Tax Assessment Appeal Board (“PTAAB”) or the Maryland Tax Court, and as amended would provide for the refund of such fees upon a “successful” appeal.

My name is Shawn Eskow, and I am a Director 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 submit this testimony to **OPPOSE** SB0885/HB0896 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.

Maryland General Assembly
Senate Budget and Taxation Committee
March 29, 2023

- 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.
- The amendment to the bill text to allow for a refund of the filing fees upon a “successful” appeal fails to cure the above deficiencies and adds yet another layer of confusion and complexity.

SB0885/HB0896 would require owners of commercial or industrial property assessed at more than \$1 million to pay a filing fee of \$50 to challenge the assessed value or classification of their properties before the PTAAB where the property is located and a filing fee of \$100 to bring such a challenge before the Maryland Tax Court. These fees are only imposed on owners of commercial or industrial property assessed at more than \$1 million and appear to be a targeted attempt to discourage or prevent legitimate property tax appeals from certain classes of taxpayers.

SB0885/HB0896 violates the Maryland Constitution

As an initial matter, SB0885/HB0896 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.

SB0885/HB0896 imposes undue burdens on property owners with legitimate grievances

In addition to the constitutional infirmity, SB0885/HB0896 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 a PTAAB or Tax Court, in our experience, that is not always the case. For example, in Prince George’s County, for the last several years, taxpayers with routine questions about assessments are given little to no consideration at the Supervisor level and often told to file an appeal to the PTAAB.

Maryland General Assembly
Senate Budget and Taxation Committee
March 29, 2023

This barrier to justice is likely to have a disproportionate impact on small business owners who own property assessed at more than \$1 million but are already saddled with substantial debt related to their ownership. The fees proposed in SB0885/HB0896 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 \$1 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.

I am not aware of any rationale for the legislation that has been proffered by the sponsors. This leaves impacted stakeholders unable to determine the purported need for legislation that would significantly hamper access to justice for one group of property tax taxpayers.

SB0885/HB0896 imposes unfunded burdens on PTAABs and the Tax Court

The proposed fees in SB0885/HB0896 may not be waived by the PTAAB or Tax Court, and thus the law mandates the agencies to manage and staff a collection function, which may exacerbate current staffing challenges and require the procurement of banking services contracts, among others. For appeal boards with few commercial and industrial property tax appeals, the costs associated with implementing the legislation will further burden limited government resources and may be prohibitive. To the extent the legislation is motivated by a desire to ease the burdens on already stretched resources at the PTAABs and Tax Court, the legislation misses the mark by creating a new set of tasks and processes that must be carried out to collect the fees imposed.

SB0885/HB0896 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.

The amendment to SB0885/HB0896 fails to remedy any of the bill's defects.

To address the valid concerns raised about the bill, a provision was added to allow for a refund of filing fees if the PTAAB or Tax Court changes the assessment in the appellant's favor. Such a provision fails to account for situations in which the PTAAB or Tax Court agrees with the appellant before a decision is required to be issued and the matter is withdrawn. It also fails to address changes in classification, which may be the basis for the appeal.

A larger concern, however, is the impact that such a change would have on the dismally low fiscal impact of approximately \$96,800 this bill would have on State revenues. Per the fiscal notes for the bill (https://mgaleg.maryland.gov/2023RS/fnotes/bil_0006/hb0896.pdf), this provision would impose the additional burden on already strained PTAABs and Tax Courts to refund over 1,000 fees to successful taxpayers. This number may be higher if it does not account for withdrawn cases that also result in a successful appeal.

Maryland General Assembly
Senate Budget and Taxation Committee
March 29, 2023

Thank you again for the opportunity to testify before the Committee, and I urge the Committee not to take up SB0885/HB0896. I will make myself available at any members' convenience to answer any questions.

Sincerely,

A handwritten signature in black ink that reads "Shawn Eskow". The signature is written in a cursive style with a large initial 'S' and a distinct 'E'.

Shawn Eskow
Ryan, LLC

House Bill 896 & Senate Bill 885 Testimony in Oppo

Uploaded by: Bryan Young

Position: UNF

LAW OFFICES OF
BRYAN W. YOUNG, P.A.
606 BALTIMORE AVENUE
SUITE 302
TOWSON, MARYLAND 21204

E-Mail
byoung@bwylaw.com
Website
www.bwylaw.com

March 29, 2023

TELEPHONE
(410) 583-7800
FAX
(410) 583-9505

IN OPPOSITION OF
HOUSE BILL 896 &
SENATE BILL 885

Budget and Taxation Committee
Maryland Senate
West Miller Senate Building, Room 3
Annapolis, Maryland 21401

RE: House Bill 896 & Senate Bill 885 – Requiring certain filing fees when filing an appeal of a property tax assessment or classification of commercial or industrial property with an assessed value greater than \$1,000,000.

Dear Members of the Committee:

I respectfully submit this summary letter in conjunction with my testimony on March 30, 2023 in opposition to House Bill 896 & Senate Bill 885.

PROFESSIONAL BACKGROUND AND QUALIFICATIONS

- Past Chair of the Tax Section of the Maryland State Bar Association (Chair 2006-2007)
- Author of the Maryland Chapter of the American Bar Association's (ABA), The Property Tax Deskbook, for all 27 editions (1996-2022)
- Author of the Real Property Tax Chapter of Maryland Taxes, Maryland Institute for Continuing Legal Education (MICPEL/MSBA)
- Sole Maryland Member of National Association of Property Tax Attorney's (NAPTA)
- Attorney concentrating his firm's practice (for over 30 years) to representing Maryland Commercial and Residential property taxpayers before SDAT, Property Tax Assessment Appeals Boards and the Maryland Tax Court; Representations range from large malls, office buildings, factories, R&D facilities, apartments etc. to single family residences; Representative Property Assessed Values range from \$50,000 to \$500,000,000
- Resident of Baltimore County

ARGUMENTS IN OPPOSITION TO HOUSE BILL 896 & SENATE BILL 885

I cannot emphasize my opposition to House Bill 896 & Senate Bill 885 more strongly than this: **Passage of this Bill and requiring a \$50 or \$100 filing fee will reverse Maryland's longstanding position of not discouraging Taxpayers to challenge their assessments by placing a barrier on the legal right of Taxpayers' to challenge their assessed values; Passage of this bill will arbitrarily discriminate against a certain class of Taxpayers/Property Owners while not imposing the same burden on all Taxpayers/Property Owners.** By imposing a fee on the right to appeal to the Property Tax Assessment Appeals Board (PTAAB) and the Maryland Tax Court the Bill's consequences will be to discourage Taxpayers from appealing their property assessments. A Taxpayer should not have to pay a fee to exercise a legal right. The General Assembly should enact laws that protects and enhances Taxpayers' Legal Rights and not enact laws that places limitations and burdens on those Legal Rights. The assessment system in Maryland has long taken the position to protect the Taxpayers' appeal rights and goes to great lengths to makes sure a Taxpayer's appeal rights are not limited. This starts at the State Department com of Assessments and Taxation (SDAT) and continues at the PTAABs and the Maryland Tax Court. **Further, the bill arbitrarily discriminates against commercial/industrial property owners with values over \$1,000,000. First, there is really no difference in a \$900,000 commercial/industrial property (not subject to the fee) and a \$1,050,000 one (subject to the fee). Moreover, imposing the fee on only commercial/industrial is discriminatory and arbitrary at the expense of commercial/industrial property owners assessed over \$1,000,0000 to the benefit of residential property owners and commercial/industrial property owners valued at or less than \$1,000,000.**

In order to support my position above, I respectfully submit the following summary arguments in opposition to House Bill 896 Senate Bill 885:

- **Constitutional Problem:** Article 15 of the Declaration of Rights of the Constitution of Maryland provides "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). Commercial and Industrial Property is not a separate classification of property from "Residential Property." Commercial/Industrial property should not and cannot be taxed, assessed or **charged a filing fee** under different laws than residential properties. Doing so provides preferential treatment to residential properties and is not uniform.

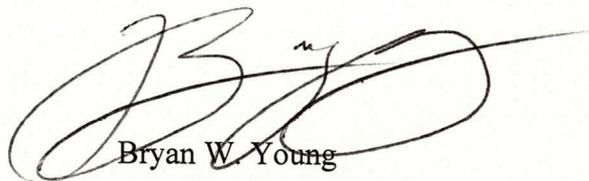
-**SDAT is Understaffed and Underfunded Resulting in the Necessity to Appeal to the PTAABS** – Because SDAT is understaffed and underfunded assessors do not have the necessary resources and time to adequately consider appeals at the Supervisor of Assessment Level. This results in good appeals being affirmed or insufficiently adjusted. Appeals to the PTAAB is then necessary. Commercial/Property Taxpayers with properties exceeding \$1,000,000 should not have their Appeals Right to the PTAAB limited and predicated on paying a \$50 fee. The Right to Appeal to the PTAAB is absolute and should not be conditioned on paying a \$50 fee.

-The Maryland Tax Court Has Never Imposed a Filing Fee and Makes a Conscious Effort to Ensure Taxpayers Have Access to Appeal Their Assessments – The Tax Court has never imposed a filing fee and has made a deliberate effort to not do so. The Tax Court has historically believed the ability of a Taxpayer to appeal their assessment should be easily accessible and not hindered. The Court has always made the initiating of an assessment appeal an open and Taxpayer friendly process. Imposing a \$100 filing fee goes against all the above. Further, the Tax Court did not initiate House Bill 896 & Senate Bill 885. Moreover, if this Bill passes on Real Property Tax Appeals would have a fee imposed while all other Tax Court Appeals would not have a fee. These include Personal Property Tax Appeals, Sales Tax Appeals, Income Tax Appeals, Transfer/Recordation Appeals etc. This is inconsistent and discriminatory.

-Many Commercial/Industrial Properties are made up of Multiple Parcels/Tax Accounts Resulting in Multiple \$50 and \$100 Filing Fees for a Single Commercial/Industrial Complex – Not all properties are made up of one tax account/parcel. For example, many apartment complexes, shopping centers and office complexes are made up of multiple accounts. To this point I represent an apartment complex in Baltimore City that is made up one 7 tax accounts/parcels that when the assessment is appealed all 7 tax accounts/parcels are appealed as one. Under this bill the Taxpayer would be required to pay a \$350 Fee for a PTAAB Appeal or \$700 for a Tax Court Appeal. This is onerous and an impairment to the Taxpayer's right to contest the assessment.

For the reasons outlined above, I respectfully oppose the passage of House Bill 896 & Senate Bill 885. I want to thank the Committee for their consideration.

Very truly yours,



Bryan W. Young

BWY/dd

HB 896 - Commerical and Industrial Property - Fees

Uploaded by: Christa McGee

Position: UNF



House Bill 896 - Property Tax Appeals – Commercial and Industrial Property – Fees

Maryland REALTORS® have concerns with HB 896 which would impose a \$50 filing fee for commercial or industrial property owners who seek additional review of the determinations made regarding either the valuation or classification of their property by the property tax assessment appeal board and would impose a \$100 fee when filing an appeal of the determination made by the tax assessment appeal board.

Although this bill does allow for the property owner to recover the filing fee associated with requesting additional review of a determination made by the tax assessment appeal board or when appealing the determination previously made by the board if they were to prevail. Property owners have a given right to challenge property tax assessments that they feel are incorrect and the fear of being penalized creates a disincentive among these individuals for exercising this right.

The REALTORS® have opposed other legislative initiatives that impose fees on property owners who are seeking to challenge determinations made by governing entities with regards to the valuation of their property

Maryland REALTORS® respectfully requests an unfavorable report on House Bill 896.

**For more information contact
lisa.may@mdrealtor.org or christa.mcgee@mdrealtor.org**