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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