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February 28, 2023

IN OPPOSITION TO HB 896

Ways and Means Committee
Maryland House of Delegates
House Office Building, Room 130
Annapolis, Maryland 21401

RE: House Bill 896 - 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 February 28, 2023 in opposition to House Bill 896.

Personal Background

My name is Alexander H. Bushel. I practice in law Baltimore, Maryland at Abramoff Bushel LLC. Our firm's practice consists almost entirely of real property tax assessment appeals. I have been a member of the Maryland Bar since 2009 and the Kentucky Bar since 2008. I have served on the Maryland State Bar Association's Tax Section Council. My focus has been in this area of the law since 2010.

In our practice, we represent taxpayers from every county and Baltimore City. We represent the owners of houses, office buildings, shopping centers, golf courses, nursing homes, hotels, marinas, mines, apartments, warehouses, factories, hospitals, farms, etc. This representation includes handling these appeal 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 the State's appellate courts.

The Bill

This Bill proposes to set filing fees for certain properties to the Property Tax Assessment Appeals Boards and to the Maryland Tax Court. I am opposing this bill for three main reasons: 1) as drafted it will lead to unfair and unintended burdens, 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. Practically speaking, many commercial properties consist of numerous tax parcels. A shopping center, for instance, 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 Bill is not designed for the realities on the ground. Last year we had a situation where an Assessment Office accidentally issued thirty-two (32) Final Notices of Assessment (official notice of final decision from first-level appeal) without holding hearings. The taxpayers’ only legal remedy was to appeal to the PTAAB within thirty (30) days 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? Nor was this an isolated incident, often first-level appeals are finalized without a statutorily required hearing. This is especially true in the larger counties where staffing shortages are most acute and mistakes more likely to occur.

The Bill Arbitrarily Treats Certain Properties Differently from Others and Does Not Consider the Added Burden on the PTAABs or the Maryland Tax Court – The fees in this Bill are only to 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. A residential appeal and a commercial appeal take the same amount of resources for the PTAAB or Tax Court to accept and hear. The same goes for properties assessed above or below \$1,000,000. As a result, these lines between commercial/residential and over/under \$1,000,000 have no apparent purpose other than to discourage appeals from the disfavored categories.

The purpose of filing fees is not to deter access to justice and courts, especially for questioning the judgment of an administrative agency. Filing fees in our courts are 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 want 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 Tax Court was not consulted about this legislation. Likewise, the PTAAB is a very small agency and the collection of fees will add a significant new burden to its duties.

Article 15 of Maryland's Declaration of Rights states "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 legislation does not define the term "commercial and industrial property" nor is it defined in the Tax-Property Article. How would "mixed" properties be treated? These are properties that are usually a mix of first-floor retail and apartments upstairs. It is completely unclear how these properties would be affected. Another consideration is that many residential properties are owned by investors. What basis is there to treat these properties different from apartment buildings that SDAT classifies as "Commercial?"

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.

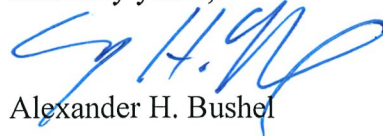
SDAT, like many government agencies, needs institutional knowledge to function. With SDAT having trouble convincing the next generation to pursue a career with the Department, we are in danger of losing much of this knowledge base. Typically, the longer a person works in a field, the exponentially better 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.

Conclusion

Therefore, I respectfully oppose House Bill 896.

Sincerely yours,



Alexander H. Bushel