

SDAT_SB0279_Support.pdf

Uploaded by: Director Michael Higgs

Position: FAV

WES MOORE
Governor
ARUNA MILLER
Lt. Governor



MICHAEL HIGGS
Director
MARCUS ALZONA
Deputy Director

301 W. Preston Street, Room 801, Baltimore, Maryland 21201
Legislative Liaison: Joshua.Greenberg@Maryland.gov
1-888-246-5941 TTY: 1-800-735-2258
www.dat.maryland.gov

HEARING DATE: January 17, 2024

BILL: SB0279

TITLE: Property Tax Assessment - Appeals to Maryland Tax Court - Filing Fee

SDAT POSITION: SUPPORT

The Department of Assessments and Taxation supports Senate Bill 279 - Property Tax Assessment - Appeals to Maryland Tax Court - Filing Fee. This bill would establish a \$100 filing fee for high value commercial properties to appeal a property tax assessment to the Maryland Tax Court.

In most neighboring jurisdictions, all properties, regardless of their assessed value, are subject to some sort of filing fee imposed either by their local circuit court or state tax court when a real property assessment is appealed. Maryland is unique among its neighboring jurisdictions in that it does not charge a fee for property assessment appeals to the Tax Court under any circumstances. As a result, both the Department's assessors and the Maryland Tax Court spend a disproportionate amount of resources responding to often-baseless appeals that are automatically filed by high value commercial properties every assessment cycle.

Senate Bill 279 would offset the cost of responding to property assessment appeals by establishing a \$100 filing fee made payable to the Maryland Tax Court. This bill limits the fee to be paid only by revenue generating properties assessed at a value of \$5 million or greater to capture only those properties that take up the majority of the Department's resources without burdening the average homeowner.

Accordingly, the Department respectfully requests a **FAVORABLE** report on Senate Bill 279.

SB0279-BT_MACo_SUP.pdf

Uploaded by: Kevin Kinnally

Position: FAV



Senate Bill 279

Property Tax Assessment – Appeals to Maryland Tax Court – Filing Fee

MACo Position: **SUPPORT**

To: Budget and Taxation Committee

Date: January 17, 2024

From: Kevin Kinnally

The Maryland Association of Counties (MACo) **SUPPORTS** SB 279. By applying a reasonable fee for property tax appeals on substantial income-producing properties, 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 residents.

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 assessment appeal process typically begins with an appeal of the notice of assessment. If a taxpayer is unsatisfied with the outcome, they may appeal to the appropriate Property Tax Assessment Appeals Board. A further appeal may be taken to the Maryland Tax Court, the final administrative entity for appeals to property tax assessments.

The bill requires owners of substantial commercial or industrial properties to have “skin in the game” by imposing a \$100 fee for assessment appeals on income-generating properties valued over \$5 million. This could help reduce the barrage of frivolous assessment appeals, which waste valuable time and resources and jeopardize limited local funds for schools, housing, public safety, public health, and other essential services.

By requiring reasonable fees for substantial commercial or industrial property tax appeals, SB 279 ensures a more equitable system for all taxpayers. Accordingly, MACo urges the Committee to issue a **FAVORABLE** report on SB 279.

MMHA - 2024 - SB 279 - MD Tax Court Fee.pdf

Uploaded by: Grason Wiggins

Position: FWA



Senate Bill 279

Committee: Budget and Taxation

Date: January 17, 2024

Position: Favorable with Amendments

The Maryland Multi-Housing Association (MMHA) is a professional trade association established in 1996, whose members house more than 538,000 residents of the State of Maryland. MMHA's membership consists of owners and managers of more than 210,000 rental housing homes in over 958 apartment communities and more than 250 associate member companies who supply goods and services to the multi-housing industry.

Senate Bill 279 requires taxpayers to pay a \$100 *unrecoverable* fee to the Maryland Tax Court when filing an appeal of a tax assessment for certain properties. MMHA generally opposes unrecoverable filing fees. Litigants who win the appeal should be awarded their cost to bring the action, otherwise you chill the appeal of legitimate claims. For this reason, MMHA respectfully requests that the committee allow the taxpayer to recover the fee if they prevail on appeal.

Please contact Grason Wiggins at (912) 687-5745 with any questions.

Testimony in Regard to Senate Bill 279.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

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WWW.ABRBUS.COM
(410) 583-1400

January 17, 2024

IN OPPOSITION TO SB 279

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

RE: Senate Bill 279 – Property Tax Assessments – Appeal to Maryland Tax Court – Filing Fee

Dear Members of the Committee:

I respectfully submit this letter as testimony in opposition to Senate Bill 279.

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 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 the State's appellate courts.

The Bill

This Bill proposes to set a \$100 filing fee for assessment appeals of income producing properties assessed for \$5,000,000 or more to the Maryland Tax Court. I am opposing this bill because the fees are being proposed for the sole purpose of discouraging certain taxpayers from exercising their appeal rights. This is an inappropriate reason for which to instate a filing fee.

A version of this bill was first introduced last session. It purported to create filing fees for certain commercial assessment appeals in order reduce the number of them. The purpose of a filing fee in a court, however, is not to deter access to justice and courts. Filing fees in our courts are for the purpose of recouping reasonable costs incurred by the tribunal in opening and processing matters. The Tax Court has long held a policy that it does not want to charge fees and restrict access of taxpayers. I recently discussed this push for filing fees with a retired Chief Judge of the Maryland Tax Court. He was disheartened to hear that this was being considered and he was of the firm opinion that it was entirely misguided to charge a taxpayer for the right to appeal their taxes.

What makes the legislation most distasteful to me is that the idea for filing fees on assessment appeals is not even coming from the Maryland Tax Court. **The Court did not ask for this bill and is not supporting it.** This bill was filed at the request of SDAT. Importantly, the Maryland Tax Court is an independent agency from SDAT and has the authority to override SDAT (change assessments, institute credits, and exemptions, etc.). Moreover, the Tax Court already has the ability to institute filing fees if it so wishes (see COMAR 14.12.01.01.B).

This legislation also begs the question of why is the legislature not ordering the Tax Court to charge filing fees for appeals of income tax, sales and use tax, digital ad tax, estate tax, admission and amusement tax, and other taxes? What is more costly about handling a real property assessment appeal over a complicated corporate income tax case?

Perhaps the clearest illustration of the utter lack of proper purpose to this bill is that the fees collected do not even accrue to the Maryland Tax Court. Rather, it appears they will simply be turned over to the State's general coffers.

Supporters of this bill will likely argue that the proposed fee is relatively modest. Even accepting that as an argument, however, does not show that there is a proper purpose for charging the fee. If a fee being "modest" makes it acceptable, why not charge modest fees for submitting committee testimony? Constituent mail? Complaint letters to the Governor?

Conclusion

As this bill is conceived purely as a punishment to taxpayers and does nothing to support the Maryland Tax Court, I respectfully oppose Senate Bill 279.

Sincerely yours,



Alexander H. Bushel

Ryan, LLC Opposition to SB279.HB174 2024.01.16.pdf

Uploaded by: Argi O'Leary

Position: UNF



2050 M Street NW
Suite 800
Washington, DC 20036
Direct 571.481.9427
Mobile 240.426.2027

January 16, 2024

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

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

Thank you for the opportunity to offer testimony in OPPOSITION to Senate Bill 0279/House Bill 0174, 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 SB0279/HB0174 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
House Ways and Means Committee
January 16, 2024

- 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.

SB0279/HB0174 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.

SB0279/HB0174 violates the Maryland Constitution

As an initial matter, SB0279/HB0174 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.

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

In addition to the constitutional infirmity, SB0279/HB0174 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 SB0279/HB0174 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.

Maryland General Assembly
House Ways and Means Committee
January 16, 2024

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.

SB0279/HB0174 imposes unfunded burdens on the Tax Court

The proposed fees in SB0279/HB0174 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. To the extent the legislation is motivated by a desire to ease the burdens on already stretched resources at the 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.

SB0279/HB0174 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 SB0279/HB0174. I will make myself available at any members' convenience to answer any questions.

Sincerely,



Shawn Eskow
Ryan, LLC

Senate Bill 279 Opposition - Bryan W Young, PA Jan

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

January 16, 2024

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

IN OPPOSITION OF
SENATE BILL 279

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

RE: Senate Bill 279 – “Requiring a taxpayer, when filing an appeal to the Maryland Tax Court of a property tax assessment for income-producing property valued greater than \$5,000,000, to pay a \$100 nonrefundable fee to the Maryland Tax Court.”

Dear Members of the Committee:

I respectfully submit this summary in opposition to Senate Bill 279.

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 28 editions (1996-2023)
- 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 SENATE BILL 279

I. The Maryland Tax Court did not initiate this bill, it was initiated by SDAT (Department of Assessments and Taxation). The Tax Court's Rules of Procedure contained in COMAR Regulation 14.12.01.01.B states "There shall be no fee for filing a Petition in the Court." If the Tax Court found it necessary to impose filing fees, then it has the power to do so itself by imposing fees in its promulgated Rules of Procedure. Senate Bill 279 appears to be an end run around that power.

Passage of this Bill requiring a \$100 filing fee will reverse the Maryland Tax Court's longstanding position of not imposing a filing fee which would discourage Taxpayers from challenging their assessments by placing a barrier on the legal right of Taxpayers' to challenge their assessed values. By imposing a fee on the right to appeal to 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 protect and enhance 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. **Notably, the Tax Court did not initiate this bill, SDAT did.** 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. **If the Tax Court found it necessary to impose filing fees it has the power to do so itself by imposing fees in its promulgated Rules of Procedure. Senate Bill 279 appears to be an end run around that power.**

II. Senate Bill 279 only affects Income Producing Real Property Appeals Assessed Over \$5,000,000 and Does Not Apply to The Numerous Other Type of Tax Court Appeals

If this Bill passes, only Real Property Tax Appeals would have a fee imposed while all other Tax Court Appeals would not have a fee. **Other Tax Court Appeals not subject to the fee will include: Personal Property Tax Appeals, Sales & Use Tax Appeals, Income Tax Appeals, Transfer/Recordation Appeals etc. This is inconsistent and discriminatory.**

III. 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). Income Producing Commercial and Industrial Property assessed over \$5,000,000 is not a

separate classification of property from Residential Property or Commercial/Industrial Property assessed at or under \$5,000,000 and is not uniform. Income Producing Commercial/Industrial property assessed over \$5,000,000 should not and cannot be taxed, assessed, or **charged a filing fee** under different laws than residential properties or Commercial and Industrial Property assessed at or under \$5,000,000. **Doing so provides preferential treatment to residential properties & Commercial and Industrial Property assessed at or under \$5,000,000 and is not uniform.**

IV. Senate Bill 279 Arbitrarily Discriminates against Income Producing Commercial/Industrial property owners with values over \$5,000,000.

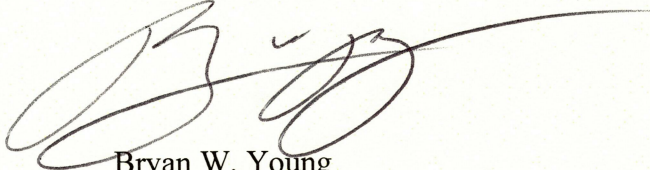
Further, there is no difference between a \$4,950,000 commercial/industrial property (not subject to the fee) and a \$5,050,000 one (subject to the fee). Moreover, imposing the fee on only income producing commercial/industrial property assessed over \$5,000,000 is discriminatory and arbitrary at the expense of commercial/industrial property owners assessed over \$5,000,000 and to the benefit of residential property owners and commercial/industrial property owners valued at or less than \$5,000,000.

V. Many Commercial/Industrial Properties Assessed over \$5,000,000 are made up of Multiple Parcels/Tax Accounts Resulting in Multiple \$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 of 7 tax accounts/parcels that when the assessment is appealed, all 7 tax accounts/parcels are appealed. Under this bill that Taxpayer would be required to pay a \$700 fee 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 Senate Bill 279. I want to thank the Committee for their consideration.

Very truly yours,



Bryan W. Young

BWY/dd

SB 279 - Commercial Property Assessment Appeals Fe

Uploaded by: Tom Ballentine

Position: UNF



January 16, 2024

The Honorable, Guy Guzzone, Chair
Senate Budget and Taxation Committee
Miller Senate Office Building, 3 West
Annapolis, Maryland 21401

Oppose: SB 279 – Commercial Property Assessment Appeal Fee

Dear Chair, Guzzone and Committee Members:

NAIOP represents 22,000 commercial real estate professionals in the United States and Canada. Our Maryland membership is comprised of a mix of local firms and publicly traded real estate investment trusts that have long-standing investments in Maryland but also have experience in national and international markets. NAIOP members deliver office, mixed use, multi-family, and warehouse developments that meet the changing ways that people work, live, shop and play. On behalf of our member companies, I am writing in opposition to SB 279 which would establish a fee on commercial property tax appeals.

This bill arrives at a time when there is deep dissatisfaction with the SDAT assessment and appeals process. Despite requiring that property owners provide annual income and expense information, property assessments are frequently wrong but presumed to be correct during the appeals process. This leaves the Tax Court to provide a much-needed backstop for taxpayers.

Imposing a filing fee to access the Maryland Tax Court would breach a long-standing policy of the Court that taxpayers should not have to pay a fee to access their right of judicial review. In fact, the Tax Court does not charge a filing fee for the appeal of other matters that it handles such as sales and use tax, income tax, estate tax or admissions and amusement taxes.

In written testimony on a prior year bill, proponents argued the fee could help reduce, “frivolous assessment appeals.” This point of view misunderstands the process and the practical difficulties it presents taxpayers. Fees should never be imposed to limit access or discourage appeals.

Thank you for consideration of our point of view.

Sincerely,

A handwritten signature in blue ink, appearing to read "T.M. Ballentine".

Tom Ballentine, Vice President for Policy
NAIOP – Maryland Chapters, *The Association for Commercial Real Estate*

cc: Budget and Taxation Committee Members
Nick Manis – Manis, Canning Assoc.