

M E M O R A N D U M

TO: Management and Fiscal Policy Committee

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** Expedited Bill 16-09, Room Rental and Transient Tax - Amendments

Expedited Bill 16-09, Room Rental and Transient Tax - Amendments, sponsored by the Council President at the request of the County Executive, was introduced on March 31, 2009. A public hearing was held on May 5, at which the only speaker, OMB Director Joe Beach, supported the Bill.

Bill 16-09 would expressly require brokers of sleeping accommodations (mainly internet booking agencies) to collect and remit the County hotel-motel tax. Under the current law, the hotel usually pays the County the amount it receives from the booking service rather than the amount the traveler pays the booking service, which is the amount that the tax is supposed to be based on. This Bill would also generally update the hotel-motel tax law's archaic language, which has not been revised in many years.

Added revenue OMB estimated that extending the tax to hotel brokers and basing it on the amount they collect from travelers, rather than the amount the hotel collects from the broker, would raise an additional \$223,820 in FY10. Amending the law to cover payments to brokers is overdue and makes sense, regardless of the revenue impact. **Council staff recommendation:** enact Bill 16-09.

Executive amendment In his testimony, Mr. Beach requested that the Council delete the amendment to §52-16(j), which would have revised the calculation of the amount of the hotel-motel tax that is annually given to the County Conference and Visitors Bureau. Currently, the 3.5% contribution to the CVB is based on actual revenue collected and can differ from the budgeted estimate, depending on how much tax is actually collected. Under the Bill as introduced, the CVB would receive a guaranteed amount of revenue from the County based on the amount of this tax that was estimated in the budget. The Planning, Housing and Economic Development Committee, in its review of the Department of Economic Development budget, endorsed the current policy of giving the CVB 3.5% of the actual revenue collected. Council staff concurs. **Council staff recommendation:** delete budgeted on ©9, line 185.

Effective date As an Expedited Bill, this Bill would take effect when the Executive signs it (see ©9, lines 190-192). Assuming this Committee recommends enactment, the Council is scheduled to act on this Bill on May 13. While the Executive could certainly sign it sooner, under the normal timetable he could sign it as late as May 26. In our view, having this kind of change take effect on a recognizable date, such as the beginning of a month, is easier for all parties to deal with. **Council staff recommendation:** make this Bill effective on June 1, 2009.

This packet contains:	<u>Circle #</u>
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Expedited Bill No. 16-09
Concerning: Room Rental and Transient
Tax – Amendments
Revised: 3-30-09 Draft No. 2
Introduced: March 31, 2009
Expires: October 1, 2010
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) require certain brokers of sleeping accommodations to collect and remit to the County a room rental tax for certain transients;
- (2) make technical and clarifying amendments to the County room rental tax; and
- (3) generally amend the law governing the room rental and transient tax.

By amending

Montgomery County Code
Chapter 52, Taxation
Section 52-16

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 52-16 is amended as follows:**

2 **52-16. Room rental and transient tax.**

3 (a) (1) [There is levied and imposed] The Director of Finance must
4 impose on each [and every] transient a tax at the rate of 7
5 percent of the total amount paid for room rental, by or for the
6 transient, [to any hotel or motel] for sleeping accommodations
7 in any hotel or motel that is located in the County.

8 (2) The County Council by resolution, after a public hearing
9 advertised under Section 52-17(c), may increase or decrease the
10 rate of this tax.

11 (b) The following words and phrases, when used in this Section, have the
12 following meanings:

13 [(1)] *Transient:* [Any person] An individual who, for any period of
14 [not more than] 30 or fewer consecutive days, actually occupies
15 a sleeping [accommodations in any hotel or motel providing
16 sleeping accommodations for which a charge is made]
17 accommodation.

18 [(2)] *Person:* A human being. “Person” does not include
19 corporations, firms, associations, partnerships, companies,
20 government bodies or agencies and other artificial persons.]

21 Broker: A person, other than the owner or operator of a hotel or
22 motel, that receives payment for hotel or motel
23 accommodations from a transient who is subject to tax under
24 subsection (a).

25 [(3)] *Hotel or motel:*

26 (1) Any [public or private] hotel, inn, hostelry, tourist home
 27 or house, motel, apartment hotel, rooming house, or other
 28 lodging place [within Montgomery County, offering
 29 sleeping accommodations for five (5) or more persons at
 30 any one time, that for compensation furnishes sleeping
 31 accommodations to any transient as defined in paragraph
 32 (1) of this subsection. "Hotel" or "motel" includes the
 33 owner or operator of the hotel or motel] that offers for
 34 compensation sleeping accommodations in the County to
 35 5 or more transients at any one time.

36 (2) A hotel or motel does not include:

37 (A) a hospital, medical clinic, nursing home, rest
 38 home, convalescent home, assisted living facility,
 39 or home for elderly individuals; or

40 (B) a facility owned or leased by an organization that
 41 is exempt from taxation under section 501(c)(3) of
 42 the Internal Revenue Code if the primary use of
 43 the facility is other than housing overnight guests.

44 *Hotelkeeper:* A person that:

45 (1) owns or operates a hotel or motel; or

46 (2) acts as a broker.

47 [(4)] *Room rental:* The total charge [made by any hotel or motel for
 48 sleeping accommodations or space furnished any transient] paid
 49 by a transient for a sleeping accommodation. [If the charge
 50 made by a hotel or motel includes] Room rental does not
 51 include any charge for services [or accommodations] in

52 addition to [that] the charge for the use of sleeping space[, then
 53 the]. The portion of the total charge, if any, [as] that represents
 54 [only] other than room rental [shall] must be [distinctly set out
 55 and] separately billed [by the hotel or motel as a separate item].

56 [(5)] *Director:* Director of [finance] Finance or the Director's
 57 designee.

58 (c) Every [hotel or motel receiving] hotelkeeper that receives any
 59 payment for a room rental [with respect to which tax is levied shall]
 60 that is subject to a tax under this Section must collect the amount of
 61 tax imposed [by this section at the time] under subsection (a) when
 62 payment for the room rental is made. The hotelkeeper must hold the
 63 taxes required to be collected by this Section [shall be deemed to be
 64 held] in trust for the County [by the hotel or motel required to collect
 65 tax] until remitted as required by this Section.

66 (d) [The hotel or motel collecting the tax shall submit a report upon the
 67 forms and set forth the information as the director may prescribe and
 68 require, showing the amount of room rental charges collected, and the
 69 tax required to be collected, and shall sign and deliver the same to the
 70 director with a remittance of the tax. The reports and remittances
 71 shall be made on or before the last day of each month covering the
 72 amount of tax collected during the preceding month. Any hotel or
 73 motel operating regularly throughout the year may make written
 74 application to the director to make reports and remittances on a
 75 quarterly basis in lieu of the monthly basis provided by this
 76 subsection. The approval or disapproval of the application is in the
 77 sole discretion of the director. The quarterly reports and remittances

78 shall be made on or before the last days of April, July, October and
 79 January in each year, and shall cover the amounts collected during the
 80 three (3) months immediately preceding the months in which the
 81 reports and remittances are required.]

82 (1) Each hotelkeeper must file a report on a form supplied by the
 83 Director. The form must show the amount of room rental
 84 payments collected, the amount of tax required by this Section
 85 to be collected, and any other information the Director requires
 86 to assure that the proper tax has been remitted to the County.

87 (2) Unless the Director accepts a quarterly report, each hotelkeeper
 88 must file a report on or before the last day of each month
 89 showing all room rentals during the preceding month.

90 (3) If a hotelkeeper requests, the Director may, in the Director's
 91 sole discretion, accept a quarterly report showing all room
 92 rentals during the 3 months immediately before the month when
 93 the report is due. Each hotelkeeper so approved must file a
 94 quarterly report on or before the last day of April, July,
 95 October, and January.

96 (4) Each hotelkeeper must remit the full amount of tax due with
 97 each report.

98 (e) If any [hotel or motel shall fail or refuse to] hotelkeeper does not
 99 remit to the [director] Director the tax required to be [collected and]
 100 paid by this Section, or [to make] does not file a [proper] timely report
 101 to the [director] Director, [within the time and in the amount specified
 102 by this section, there shall be added] the Director must add to the tax
 103 [by the director] due:

104 (1) interest at the rate of one [(1)] percent per month on the amount
 105 of the tax for each month or [portion] part of a month [from the
 106 date upon which] after the tax is due[,] until the tax is paid and
 107 the report is filed; and [there shall be added to the tax by the
 108 director]

109 (2) a penalty of [five (5)] 5 percent of the amount of the tax per
 110 month or [portion] part of a month, not to exceed a total of
 111 [twenty-five (25)] 25 percent of the tax, until the tax is paid and
 112 the report is filed.

113 (f) [If any hotel or motel shall fail or refuse to collect the tax and to
 114 make, within the time provided by this section, any report and
 115 remittance required by this section, the director shall proceed in a
 116 manner as he may deem best to obtain facts and information on which
 117 to base his estimate of the tax due. As soon as the director shall
 118 procure the facts and information as the director is able to obtain upon
 119 which to base the assessment of any tax payable by any hotel or motel
 120 that has failed or refused to collect the same and to make the report
 121 and remittance, the director shall proceed to determine and assess
 122 against the hotel or motel the tax and penalties provided for by this
 123 section and shall notify the hotel or motel by mail sent to its last
 124 known place of address of the total amount of the tax and interest and
 125 penalties, and that total amount shall be payable within ten (10) days
 126 from the date of the notice.]

127 (1) If a hotelkeeper does not file a required report by the deadline
 128 established under subsection (d), the Director may estimate the
 129 amount of tax due. The Director may base the estimate on a

130 reasonable projection of room rentals, and may consider rentals
 131 reported by other hotelkeepers.

132 (2) The Director must send a notice of the estimated tax due,
 133 including interest and penalty, to the hotelkeeper's last known
 134 address. The hotelkeeper must pay the estimated tax, including
 135 any interest and penalty, assessed by the Director within 10
 136 days after the notice is sent.

137 (g) (1) [It shall be the duty of every hotel or motel liable for the
 138 collection and payment to the county of any tax imposed by this
 139 section to keep and] Each hotelkeeper must preserve, for [a
 140 period of three (3)] 3 years, [the suitable] all records [as may
 141 be] necessary to determine the amount of the tax [as the hotel or
 142 motel may have been liable for the collection of and payment to
 143 the county, which records the director shall have the right to
 144 inspect at all reasonable times] due under this Section.

145 (2) The Director may inspect any records required to be kept under
 146 this Section at any reasonable time.

147 (h) [Whenever any hotel or motel required to collect and pay to the
 148 county a tax by this section shall cease doing business or otherwise
 149 dispose of its business, any tax payable under this section to the
 150 county shall become immediately due and payable and the hotel or
 151 motel shall immediately make a report and pay the tax due.] If a hotel
 152 or motel stops doing business or a hotelkeeper disposes of its
 153 business, the hotelkeeper must immediately file a report under
 154 subsection (d) and pay any tax due.

155 (i) [No tax shall be payable under this section on a room rental:

- 156 (1) In any hospital, medical clinic, nursing home, rest home,
 157 convalescent home, or home for aged persons;
- 158 (2) From a private nonprofit educational organization that:
- 159 a. Is not organized or operated for the purpose of carrying
 160 on or promoting a trade, business, or religious
 161 philosophy; but
- 162 b. Principally houses groups of young people exclusively
 163 for the purpose of developing leadership and citizenship
 164 skills and promotion of the general public welfare; or
- 165 (3) From a nonprofit charitable, religious, educational, recreational
 166 or literary organization, other than a country club, when the
 167 primary use of the facility is other than housing overnight
 168 guests.]
- 169 [(j) It shall be the duty of the director to ascertain the name of every hotel
 170 or motel providing sleeping accommodations in Montgomery County,
 171 liable for the collection of the tax levied under this section that fails,
 172 refuses or neglects to collect the tax or to make, within the time
 173 provided by this section, the reports or remittances required by this
 174 section.]
- 175 [(k) [Any hotel or motel or transient violating or failing to] Each
 176 hotelkeeper or transient that does not comply with any [of the
 177 provisions] provision of this Section [shall be subject to punishment
 178 for] has committed a class A violation [as set forth in section 1-19 of
 179 chapter 1 of the County Code. Each violation shall constitute a
 180 separate offense. A conviction shall not relieve any hotel or motel or
 181 transient from the payment, collection or remittance of the tax]. A

182 finding of violation under this subsection does not relieve any
183 hotelkeeper or transient of any tax, including any applicable interest
184 or penalty, due under this Section.

185 [(1)] (j) At least 3.5% of the budgeted revenue from the tax levied under this
186 Section must be used for the Conference and Visitors Bureau, Inc., as
187 designated by the Council in a budget resolution to promote travel to
188 the County. The County Executive must report to the Council on the
189 use of these funds by March 15 each year.

190 **Sec. 2. Expedited Effective Date.**

191 The Council declares that this Act is necessary for the immediate protection
192 of the public interest. This Act takes effect on the date when it becomes law.

193 *Approved:*

194

195

196 _____
Philip M. Andrews, President, County Council Date

197 *Approved:*

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199

200 _____
Isiah Leggett, County Executive Date

201 *This is a correct copy of Council action.*

202

203

204 _____
Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 16-09 *Room Rental and Transient Tax – Amendments*

- DESCRIPTION:** This Bill would amend the hotel/motel tax to provide that brokers who rent a sleeping accommodation to a transient must charge and collect a hotel/motel tax from the transient and remit the tax to the County, and generally update the law setting up the Hotel/Motel tax.
- PROBLEM:** Certain travel and hotel booking agencies, particularly those that operate on the internet, have not paid the County hotel tax when a person books a room in the County through the booking service. While the hotel owner often pays the tax on the amount it receives from the booking service, that amount is usually not the amount the service has charged to the traveler, which is the amount due under the County hotel tax.
- GOALS AND OBJECTIVES:** To clarify the application of the County hotel tax to rooms booked through booking services.
- COORDINATION:** Department of Finance
- FISCAL IMPACT:** To be requested.
- ECONOMIC IMPACT:** To be requested.
- EVALUATION:** To be requested.
- EXPERIENCE ELSEWHERE:** Many other jurisdictions have imposed a transient tax.
- SOURCE OF INFORMATION:** Joseph Beach, Director, Office of Management and Budget
Marc Hansen, Deputy County Attorney
Kathleen Boucher, Assistant Chief Administrative Officer
- APPLICATION WITHIN MUNICIPALITIES:** Applies to all hotels located in the County.
- PENALTIES:** Class A for nonpayment of tax or failure to file required reports.

BILL 16-09



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

041303

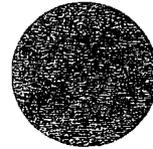
Isiah Leggett
County Executive

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MEMORANDUM

March 26, 2009



MAR 26 10 34 AM '09
COUNTY EXECUTIVE

TO: Phil Andrews, Council President
FROM: Isiah Leggett, County Executive
SUBJECT: Budget Reconciliation Bill

I am attaching for the Council's consideration a budget reconciliation bill which makes changes to the County Code that are necessary to reconcile my recommended FY10 operating budget with projected FY10 revenues. This bill will help the County address its current fiscal challenges by increasing the amount of revenue available to maintain and enhance core government programs and services. I am also attaching a Legislative Request Report for the bill. A Fiscal Impact Statement for the bill has been transmitted to Council in a separate memorandum.

This bill consists of three primary components. First, it requires certain brokers of sleeping accommodations to collect and remit to the County the room rental tax. Second, it temporarily redirects the portion of recordation tax revenues that are currently reserved for County Government capital projects and rental assistance programs to the general fund for general purposes. Third, it authorizes the Fire and Rescue Service to impose an Emergency Medical Services (EMS) Transport Fee.

With several exceptions, the part of the bill that relates to the EMS Transport Fee is identical to the bill that I forwarded to Council on April 11, 2008 and was eventually introduced by Council as Bill 25-08, Emergency Medical Services Transport Fee – Imposition. The bill includes language that I recommended as an amendment to Bill 25-08 on September 16, 2008 to clarify the underlying reason for providing that a County resident is responsible for the EMS Transport Fee only to the extent of the resident's available insurance coverage. The underlying reason for this part of the bill is to credit residents for the taxes they pay to the County, thereby more equitably distributing the economic burden of providing EMS transport services in the County between residents and nonresidents. The bill includes a non-supplantation provision which, taken together with my recommended FY10 Budget, makes it clear that EMS Transport Fee revenues will be used to fund the ongoing cost of: (1) new programs or services included in the FY09 Budget and subsequent budgets; or (2) additions to existing programs and

Phil Andrews, Council President
March 26, 2009
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provision which, taken together with my recommended FY10 Budget, makes it clear that EMS Transport Fee revenues will be used to fund the ongoing cost of: (1) new programs or services included in the FY09 Budget and subsequent budgets; or (2) additions to existing programs and services included in the FY09 Budget and subsequent budgets. Finally, the bill increases the hardship waiver threshold for non-residents from 100% to 300% of federal poverty guidelines.

Thank you for your prompt consideration of this legislation. I look forward to working with the Council as it considers this proposal.

Attachments (2)

cc: Jennifer Barrett, Director, Finance Department
Joseph Beach, Director, OMB
Tina Benjamin, Acting Director, DED
Kathleen Boucher, ACAO
Richard Bowers, Interim Director, MCFRS
Marc Hansen, Deputy County Attorney
Richard Y. Nelson, Jr., Director, DHCA

BILL 16-09



OFFICE OF MANAGEMENT AND BUDGET

041304

Isiah Leggett
County Executive

Joseph F. Beach
Director

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MEMORANDUM

March 26, 2009

TO: Phil Andrews, President, County Council
FROM: Joseph F. Beach, Director 
SUBJECT: Expedited Bill, Budget Reconciliation – Revenues – Room Rental and Transient Tax – Recordation Tax - Emergency Medical Service Transportation Fee

2009 MAR 26 PM 3:41
RECEIVED
OFFICE OF THE DIRECTOR

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

The expedited bill has three separate components with the following elements:

Room Rental Tax (i.e. Hotel/Motel Tax): This section will require certain brokers of sleeping accommodations to collect and remit to the County a room rental tax on certain transients; make certain technical and clarifying amendments to the County's room rental tax; and generally amend the law governing room rental and transient tax. The purpose of this amendment is to ensure that the differential charged by internet brokers to the consumer is subject to the room rental tax. Currently, only the amount paid to the hotel by the broker is subject to the tax. In addition, the legislation changes the basis for the dedication of 3.5 percent of the Hotel/Motel tax from actual revenues collected to the amount estimated in the annual budget.

Recordation Tax Premium: This section will amend the County law requiring the allocation of certain revenue received from the recordation tax. The purpose of this amendment is to allow a temporary redirection of the recordation tax premium to the general fund for general purposes. Currently, County law requires that 50 percent of these revenues be used for County Government capital projects and the balance for rental assistance programs.

Emergency Medical Services Transport Fee: This section of the expedited bill proposes the following: authorize the County to impose and collect a fee to recover costs generated by providing emergency medical service transports; provide for a schedule of emergency medical services transport fees, fee waiver criteria, permitted uses of fee revenues, and other procedures

Office of the Director

to operate the emergency medical services fee program; prohibit a Local Fire and Rescue Department from imposing a separate emergency medical services transport fee; require the Executive to issue certain regulations to implement an emergency medical services transport fee; require a certain annual transfer be made as payment of residents' uninsured portion of the emergency medical services transport fee; and generally amend County law regarding the provision of emergency medical services.

FISCAL SUMMARY

Hotel/Motel Tax: The projected revenue from the subject legislation is estimated to be \$223,820. This estimate is based on the following assumptions (according to Smith Travel Research data):

- Total hotel room inventory in Montgomery County: 8,445.
- Friday occupancy countywide in 2008 annual average was 57.8% with an average daily room rate of \$105.
- Saturday occupancy countywide in 2008 annual average at 58.9% with an average daily room rate of \$103.
- Friday: $8,445 \text{ rooms} \times 57.8\% \text{ yields } 4,881 \text{ room nights} \times \$105 = \$512,505 \text{ total hotel sales revenue.}$
- Saturday: $8,445 \text{ rooms} \times 58.9\% \text{ yields } 4,974 \text{ room nights} \times \$103 = \$512,322 \text{ total hotel sales revenue.}$
- Total Revenue Weekend = $\$1,024,827 \times 52 \text{ weekends.}$
- Total Weekend Hotel Revenues Annually = $\$53,291,000.$
- With the assumption that 30% of weekend business is sold to third party (Orbitz, Hotels.com, etc).
- Sales to Third Party: $\$53,291,000 \times 30\% = \$15,987,300 \text{ (paid by third parties for hotel rooms to resale).}$
- Third Party Charge to Consumer: $\$15,987,300 \text{ resold} \times 1.2 = \$19,184,760 \text{ (assumed 20\% markup by third party or } \$3,197,300).$
- Additional Revenue: Difference of $\$3,197,460 \times 7\% \text{ hotel occupancy tax} = \$223,822.20.$