

T&E COMMITTEE #3
October 10, 2011

Update

MEMORANDUM

October 6, 2011

TO: Transportation, Infrastructure, Energy and Environment (T&E) Committee

FROM: *KL* Keith Levchenko, Senior Legislative Analyst

SUBJECT: **Update:** Bag Tax Implementation

The T&E Committee Chairman asked for an update on the implementation of the County's disposable bag tax. A number of Executive department officials and staff, as well as a consultant, will participate in this update, including:

- Robert Hoyt, Director, DEP
- Ansu John, DEP
- Patrick Lacefield, Director, Office of Public Information
- Esther Bowring, Office of Public Information
- Robert Hagedoorn, Chief, Treasury Division, Department of Finance
- Ellen Coren Bogage, President and CEO, Chesapeake Public Strategies

Background

The Council approved Bill 8-11, "Taxation - Excise Tax - Disposable Carryout Bags" on May 3, 2011 (attached on ©1-6) with an effective date of January 1, 2012. This legislation imposes a 5-cent excise tax on certain carryout bags provided to customers at certain retail establishments, and requires those retail establishments to collect the carryout bag tax and remit the tax to the County. The consumer will pay the tax to the retailer, who will remit it periodically to the County Finance Department. The retailer may keep 1 cent of each 5-cent tax collected to cover administrative expenses of collecting and remitting the tax to the County.

Revenues and expenditures associated with the tax are included within the Water Quality Protection Fund. The FY12 Budget assumes revenues of \$561,640 and expenditures of \$533,580.¹

¹ The \$28,060 difference between revenues and expenditures is intended to help maintain a fund balance policy level of 5% of total revenues.

FY12 expenditures assume:

- \$234,000 in administrative costs to implement and manage the bag tax.
- \$249,580 in outreach and education and reusable bag purchases.
- \$50,000 for enhanced streetsweeping efforts (annualized to \$100,000 in FY13 and beyond).

Discussion

Executive staff have been asked to update the Committee on the implementation work to date, including:

- The distribution of reusable bags to low-income populations and others;
- Education and outreach efforts to the community;
- Outreach and assistance to supermarkets and others who must implement the charge; and
- The status of any executive regulations and/or procedures being developed to implement the bag tax.

Attachment

KML:F:\Levchenko\DEP\Bag Tax\T&E Committee Bag Tax Implementation 10 10 11.doc

Bill No. 8-11
Concerning: Taxation – Excise Tax –
Disposable Carryout Bags
Revised: 4-12-11 Draft No. 2
Introduced: March 15, 2011
Enacted: May 3, 2011
Executive: _____
Effective: January 1, 2012
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 ACT to:

- (1) impose an excise tax on certain carryout bags provided to customers at certain retail establishments;
- (2) require certain retail establishments to collect the carryout bag tax and remit the tax to the County;
- (3) authorize payment of a fee to compensate certain retail establishments for collecting the carryout bag tax;
- (4) allow certain exemptions from the carryout bag tax;
- (5) authorize imposition of an estimated carryout bag tax under certain circumstances;
- (6) authorize the imposition of interest and penalties for failure to collect and remit the carryout bag tax; and
- (7) generally amend County law to provide for an excise tax on certain bags.

By adding

Montgomery County Code
Chapter 52, Taxation
Article XIV, Carryout Bag Tax
[[Sections 52-101, 52-102, 52-103, 52-104, 52-105, 52-106, and 52-107]]

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. Article XIV is added to Chapter 52 as follows:**

2 **Article XIV. Carryout Bag Tax.**

3 **52-101. Definitions.**

4 In this Article, the following terms have the following meanings:

5 **Director** means the **Director** of the Department of Finance.

6 **Carryout bag** means a paper or plastic bag provided by a **retail**
 7 **establishment** to a customer at the point of sale, pickup, or delivery to carry
 8 purchased items. **Carryout bag** does not include:

9 (1) a bag provided by a pharmacist that contains a prescription drug;

10 (2) any newspaper bag or bag intended for initial use as a dry cleaning,
 11 garbage, pet waste, or yard waste bag;

12 (3) a bag provided at the point of sale [[at a stand]] at a seasonal event, such
 13 as a farmers market, street fair, or yard sale, or by an **occasional**
 14 **retailer;** [[or]]

15 (4) a paper bag that a **restaurant** gives a customer to take prepared or
 16 leftover food or drink from the **restaurant;** or

17 (5) a bag used to package a bulk item or to contain or wrap a perishable
 18 item.

19 **Occasional retailer** means a **retail establishment** that engages in the retail
 20 sale of goods no more than 6 days in any calendar year.

21 **Restaurant** means any **lunchroom, cafe, or other establishment** located in a
 22 permanent building for the accommodation of the public, equipped with a
 23 kitchen containing facilities and utensils for preparing and serving meals to the
 24 public, and outfitted with a public dining area. A **restaurant** does not include
 25 any area of a supermarket, department store, or other **retail establishment**
 26 beyond the kitchen and public dining area.

27 Retail establishment means any person engaged in the retail sale of goods.
 28 Retail establishment includes any supermarket, convenience store, shop,
 29 service station, or restaurant, and any other sales outlet where a customer can
 30 buy goods.

31 **52-102. Tax imposed.**

32 (a) A tax in the amount of 5 cents is levied and imposed on each customer
 33 for each carryout bag that a retail establishment provides to the
 34 customer.

35 (b) Each retail establishment that provides a carryout bag to a customer
 36 must collect the amount of the tax imposed under subsection (a) when
 37 the customer makes any payment for goods in person, through the
 38 Internet, by telephone, by facsimile, or by any other means. The retail
 39 establishment must hold the taxes required to be collected under this
 40 Section in trust for the County until remitted as required under Section
 41 52-103.

42 (c) Each retail establishment may retain 1 cent from each 5-cent tax that
 43 the retail establishment collects to cover the administrative expense of
 44 collecting and remitting the tax to the County.

45 (d) A retail establishment must indicate on the customer's transaction
 46 receipt the number of carryout bags that the retail establishment
 47 provided to the customer and the total amount of tax levied under this
 48 Section.

49 **52-103. Remittance.**

50 (a) Except as provided in subsection (b), on or before the 25th day of each
 51 month, each retail establishment must remit the full amount of the tax
 52 collected for all carryout bags provided to a customer during the
 53 previous month, less the amount retained under Section 52-102 (c).

- 54 (b) A retail establishment is only required to remit the taxes to the
 55 Director when the cumulative taxes collected under Section 52-102(a)
 56 since the previous remittance, if any, exceed \$100.
- 57 (c) Each remittance must be accompanied by a report of all transactions
 58 that involve bags subject to the tax. The report must be on a form
 59 supplied by the Director and must contain the number of bags supplied
 60 or provided to customers, the amount of tax required by this Section to
 61 be collected and any other information the Director requires to assure
 62 that the proper tax has been remitted to the County.
- 63 (d) (1) If the retail establishment does not file a required report by the
 64 deadline established under subsection (a), the Director may
 65 estimate the amount of tax due. The Director may base the
 66 estimate on a reasonable projection of bags supplied or provided
 67 and may consider taxes reported by other retail establishments.
- 68 (2) The Director may send a notice of the estimated tax due,
 69 including interest and penalty, to the retail establishment's last
 70 known address. The retail establishment must pay the estimated
 71 tax, including any interest and penalty assessed by the Director,
 72 within 10 days after the notice is sent.
- 73 (e) Each retail establishment must preserve for 3 years all records
 74 necessary to determine the amount of the tax due under this Section.
- 75 (f) The Director may inspect any records required to be kept under this
 76 Section at any reasonable time.
- 77 (g) The Director must deposit all taxes remitted under this Section into the
 78 stormwater management fund created under Section 19-35, after
 79 deducting the cost of administering this Article.
- 80 **52-104. Interest and penalties.**

81 (a) If a **retail establishment** does not remit to the **Director** any tax owed
82 under Section 52-103 when due, the **retail establishment** is liable for:

83 (1) interest on the collections at the rate of one percent per month for
84 each month or part of a month after the remittance is due; and

85 (2) a penalty of 5 percent of the amount of the collections per month
86 or part of a month after the remittance is due, up to 25 percent of
87 the tax collected.

88 (b) The **Director** must collect any interest and penalty as part of the
89 remittance due.

90 **52-105. Prohibited conduct.**

91 A **retail establishment** must not:

92 (a) neglect or refuse to collect or remit the tax levied under this Article;

93 (b) file an incomplete, false, or fraudulent report to the **Director**;

94 (c) neglect or refuse to keep complete and accurate records; or

95 (d) refuse to allow the **Director** to inspect and audit the **retail**
96 **establishment's** records.

97 **52-106. Regulations.**

98 The **County Executive** may adopt regulations under method (2) to implement
99 this Article.

100 **52-107. Enforcement.**

101 Any violation of this Article is a Class A civil violation. Each violation is a
102 separate offense. A conviction under this Section does not relieve a **retail**
103 **establishment** from paying a remittance owed to the County.

104 **Sec. 2. Effective Date.**

105 This Act takes effect on January 1, 2012.

106 *Approved:*

107

108

Valerie Ervin
Valerie Ervin, President, County Council

5/5/2011
Date

109 *Approved:*

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111

Isiah Leggett, County Executive

Date

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

113

114

Linda M. Lauer, Clerk of the Council

Date