

MEMORANDUM

October 18, 2012

TO: Government Operations and Fiscal Policy Committee
FROM: Jacob Sesker, Senior Legislative Analyst 
SUBJECT: Follow up—Municipal Revenue Sharing Task Force

The Government Operations and Fiscal Policy Committee discussed the Final Report of the Municipal Revenue Sharing Task Force on July 16, 2012. At that time, the Committee requested additional discussion regarding three potential alternatives to current County law or practice.

Staff recommends against amending Chapter 30A to limit payments to municipalities to the amount of the duplicated tax. Such an amendment to the law would unnecessarily limit the Council's discretion to make greater appropriations to municipal governments.

Staff recommends against amending Chapter 30A to allow municipal services to qualify for reimbursement in situations where both the County and the municipality provide the otherwise reimbursable service within the municipality. To do so would result in non-municipal residents paying the cost of municipal services—paying County taxes to support the cost of the County service within the municipality (e.g., County police service in Rockville), and also paying County taxes to support reimbursement to the municipality (e.g., to reimburse Rockville for police services it provides in Rockville).

Staff recommends further consideration of amending Chapter 30A to allow the County to charge a lower property tax rate within any municipality. Reducing the County property tax charged to municipal residents by the amount of the duplicated tax is consistent with the purpose of the law, and would improve transparency for non-municipal and municipal residents. However, administering a property tax system with different rates within municipalities would be difficult.

Background

Most of the General Fund property tax that municipal taxpayers pay to the County is used to fund services the County provides to municipal and non-municipal taxpayers alike. For example, General Fund property tax revenue is used to fund public schools and the community college, fire and rescue services, health and human services, libraries, and police for most municipalities. A small portion of the General Fund property tax revenue that the County receives is County property tax paid by municipal taxpayers for services that the taxpayers actually receive from the municipality—this is the duplicated tax portion.

If the eligible services provided by municipalities had been instead provided by the County, the services would have been funded with General Fund revenues. Eight separate taxes support the General Fund, the most significant of which is the property tax, which in FY11 represented 41.9% of the revenue in the General Fund.¹ Taxpayers in municipalities pay a property tax to their municipality and also pay the General Fund property tax to the County—municipal taxpayers do not pay other taxes (e.g., fuel/energy or income taxes) to both the County and a municipality.²

| | A | B | C |
|----|---|--------------------------------------|---------------------------------|
| | Tax Supported County General Fund--Revenue Sources | | |
| 1 | | Actual FY11 Tax Supported MCG Budget | |
| 2 | | Revenue (\$) | % of Total Tax Supported Budget |
| 3 | Admissions Tax | \$2,212,696 | 0.1% |
| 4 | County Income Tax | \$1,039,234,850 | 41.0% |
| 5 | Energy Tax | \$233,408,845 | 9.2% |
| 6 | Hotel/Motel Tax | \$19,295,158 | 0.8% |
| 7 | Property Tax | \$1,061,582,080 | 41.9% |
| 8 | Real Property Transfer Tax | \$71,809,475 | 2.8% |
| 9 | Recordation Tax | \$57,725,334 | 2.3% |
| 10 | Telephone Tax | \$49,087,889 | 1.9% |
| 11 | <i>Total Taxes</i> | <i>\$2,534,356,327</i> | <i>100.0%</i> |
| 12 | Source: Schedule C-3, FY13 Approved Operating Budget, Council Staff | | |

The County reimburses municipalities each year in order to achieve tax fairness between municipal and non-municipal taxpayers. The fairness issue in question is whether municipal taxpayers pay one tax (property tax) to two different governments, while receiving the services funded with those revenues from only one of those governments. However, when the reimbursement exceeds the amount of the duplicated tax, then a different tax fairness question is implicated—whether non-municipal taxpayers are actually paying a part of the cost of services that they do not receive because those services are provided in municipalities for the benefit of municipal taxpayers.

¹ The duplication payments each year are based on a two-year lag in data.

² While there is no duplicate income tax, under state law the municipalities receive 17% of income tax revenues collected from municipal residents. In FY10, the income tax accruing to the municipalities exceeded \$30 million.

Montgomery County's Municipal Revenue Program (Chapter 30A)

County Executive James P. Gleason proposed a "Municipal Revenue Program" in May 1973 in conjunction with the issuance of a report, Final Report on the Montgomery County Municipal Revenue Program. See *Final Report, attached at © 1-9*.

In the cover memorandum, Mr. Gleason stated the problem that the County Executive and the Municipal Advisory Board sought to resolve:

"Over the past year, I have explored with the Municipal Advisory Board possible inequities existing in the taxes paid by municipal and non-municipal County residents. We have concluded after careful analysis that municipal citizens pay twice for certain services—to the County and to their local jurisdiction—while receiving these services only from the municipality.

"I am proposing, therefore, a new Montgomery County Municipal Revenue Program to overcome this inequity. Under this program, the County would return annually to each municipality an amount equal to the estimated duplicated taxes paid by its residents for eligible services...

"To establish this new initiative in intergovernmental relations, new legislation must be added to the Montgomery County Code. My proposed legislation, attached herewith, would establish the program; provide that the County, subject to budgetary constraints, shall reimburse municipalities for duplicated taxes paid by their residents; and shall set forth criteria for determining eligible services. No law exists at present to enable the County to begin such a program." See *County Executive Gleason's cover memorandum, dated May 25, 1973, at © 1*.

Appendix B to the Final Report summarizes the history of the program, and confirms that the focus of that effort was tax duplication. Appendix B states in part:

"This study originated in the growing concern on the part of the County Executive and municipal officials that municipal residents were suffering a tax inequity by being taxed twice, once by the County and again by their municipal government, but receiving services only once.

"...[T]he Budget Office has attempted over the past several months to clarify both service and fiscal situations currently affecting municipal residents vis-à-vis their non-municipal counterparts. The examination has focused on four aspects: a) the determination of service areas where tax duplication may exist; b) the calculation of the estimated overlaps; c) the development of alternatives to overcome duplications; and d) the fiscal impact, on both the County and the municipalities, of the various alternatives..." See *Final Report at © 6*.

Interestingly, payment to the municipalities was not the only method explored for addressing the double-taxation problem:

“Several methods of overcoming tax inequities have been explored. One of these is the assumption by the County of service currently performed by municipalities. Another is a direct grant from the County to municipalities in an amount calculated to remove the inequity.” *See Final Report at* © 3.

An alternative not contemplated by the report was setting a lower tax rate in the municipality. This report predated the Maryland law that permitted such “tax rate differentials”—presumably the report would have explored tax rate differentials had the Maryland law permitting such differentials already been in place.

Chapter 30A (Montgomery County Municipal Revenue Program) was passed in 1973, and has changed very little in the intervening four decades.³ Under Chapter 30A, Montgomery County reimburses municipalities directly. Chapter 30A does not limit reimbursement to the portion of the cost of services that would be paid from the County’s General Fund property tax revenues.⁴ Instead, §30A-3 limits reimbursement to no more than the amount that the County would spend if it were providing the services, and states that should be approximately the amount of municipal tax revenues required to fund the eligible services (i.e., excluding non-tax revenues from the calculation of municipal expenditures).

§30A-3 (Determination of amount of reimbursement). Subject to the provisions of section 30A-4, each participating municipality shall be reimbursed by an amount determined by the county executive to approximate the amount of municipal tax revenues required to fund the eligible services. The amount of reimbursement shall be limited to the amount the county executive estimates the county would expend if it were providing the services.

Chapter 30A contains an additional limitation on expenditures—expenditures under the Municipal Revenue Program are limited to the funds appropriated by the Council. Put differently, there is no requirement that the Council appropriate funds—in any given year, the Council may choose to make an appropriation of \$0.⁵

§30A-4 (Limitations on expenditures). All expenditures by the county under the authority of this chapter shall be subject to the limits of the funds appropriated by the county council.

The legislative history indicates that Mr. Gleason was mindful of the fact that any County expenditure of funds for the purpose of reimbursing municipalities for duplicated taxes paid by

³ The only changes to the law since its passage were changes to §30A-6 (County tax rate in certain municipalities), which applied only to Takoma Park and are no longer applicable because Takoma Park no longer performs fire and rescue services.

⁴ Under the County law, the County may reimburse municipalities for the portion of the County’s net cost that is funded by other taxes (e.g., income tax, sales tax, recordation and transfer taxes, energy tax, etc.) paid by municipal residents only once (i.e., not duplicated).

⁵ Taken together, §30A-3 and §30A-4 contemplate reimbursement payments from the County to municipalities that fall within a range. Using the FY13 budget to illustrate, the maximum (the amount the County would expend if it were providing the services) would have been \$11,571,446, and the minimum would have been \$0. The actual FY13 budget (\$7,776,720) fell within a range, the outer limits of which were established by §30A-3 and §30A-4.

municipal taxpayers must be affordable to the County given any current budget constraints.⁶ Taken together, §30A-3 and §30A-4 contemplate reimbursement payments from the County to municipalities that fall within a range.⁷

Maryland Tax-Property §6-305

Two years later, in 1975, the Maryland tax duplication law was enacted. In its earliest form, the Maryland law was permissive, allowing counties to charge a lower tax rate to municipal taxpayers if the municipality provided services in lieu of county services. The law also allowed a county to make reimbursement payments in lieu of setting a lower property tax rate. The law has been amended several times since it was enacted, most notably to impose requirements on some counties, including Montgomery. Under §6-305(c), the county shall meet and discuss with the governing body of any municipal corporation the county property tax rate to be set within the municipality, and grant a tax setoff to a municipal corporation if the municipal corporation can demonstrate that it performs services or programs instead of similar county services or programs.

Under §6-305(a), the “setoff” is defined as either: (1) a lower General Fund county property tax rate for property in a municipality; or (2) a payment to a municipal corporation to aid the municipal corporation in funding services or programs that are similar to county services or programs.⁸

Under §6-305(d), in determining the amount of the setoff, the county must consider (1) the services and programs⁹ that are performed by the municipal corporation instead of similar county services and programs; and (2) the extent that the similar services and programs are funded by property tax revenues.¹⁰

Alternatives

Alternative 1: Amending Chapter 30A to limit the payment made to a municipality to the portion of the County’s General Fund revenue derived from property taxes collected in the municipalities and used to fund County services.

The FY13 budget for the Municipal Tax Duplication NDA (excluding speed camera revenues) was \$7,776,720. The maximum reimbursable amount is the amount the County would

⁶ Indeed, the County Executive’s memorandum stated that, under the program, “the County, subject to budgetary constraints, shall reimburse municipalities for duplicated taxes paid by their residents.” An example of the budget constraints contemplated are those that have faced the County in the last four years.

⁷ Using the FY13 budget for the Municipal Tax Duplication NDA to illustrate, the maximum reimbursable amount is the amount the County would expend if it were providing the services—in this case, that maximum FY13 to municipalities would have been \$11,571,446, and the minimum would have been \$0. The actual FY13 budget for the Municipal Tax Duplication NDA (excluding speed camera revenues) was \$7,776,720.

⁸ Of the 21 Maryland counties that have municipalities, Montgomery County is one of six that exclusively employs the reimbursement method. Eight Maryland counties set differential tax rates in their municipalities, four of which use both the tax differential and tax rebate (duplication payment) options. For relevant table, see DLS Report, Exhibit 2 © 10.

⁹ Note that the State law does not require counties to consider the cost to municipalities of providing the services, nor does the State law require counties to consider the cost savings to the county associated with not providing the services.

¹⁰ Note that the law does not require that a county reimburse a municipality for the property tax funded portion of the expenditure, nor does it limit any reimbursement from the county to the portion of the expenditure that would have been funded with property tax revenue.

expend if it were providing the services—in this case, that maximum amount for FY13 would have been \$11,571,446. Under §30A-3, the amount is subject to appropriation by the Council, reflecting a long-standing recognition that budget constraints limit appropriations even when actual tax duplication occurs. The minimum payment from the County to the municipalities would have been \$0. In FY13, the duplicated tax amount was \$4,851,636¹¹—nearly \$3 million less than the actual FY13 appropriation.¹²

| | A | B | C | D | E | F |
|--|-----------------------|------------------------------------|------------------------------------|----------------------------------|-----------------------------------|----------------------------|
| | | | | D=E+F | E=Cx41.9% | F=D-E |
| Municipal Tax Duplication - FY13 Current Formulas with FY11 Actual Data | | | | | | |
| 1 | Municipality | FY13 | FY13 | FY13 | FY13 | FY13 |
| 2 | | Minimum reimbursement under §30A-4 | Maximum reimbursement under §30A-3 | Actual reimbursement in FY13 NDA | Reimbursement-property tax funded | Reimbursement-grant funded |
| 3 | | | | | | |
| 4 | | | | | | |
| 5 | Barnesville | \$0 | \$0 | \$0 | \$0 | \$0 |
| 6 | Brookeville | \$0 | \$14,688 | \$6,794 | \$5,882 | \$912 |
| 7 | Chevy Chase, Sec. III | \$0 | \$53,385 | \$30,796 | \$22,453 | \$8,343 |
| 8 | Chevy Chase, Sec. V | \$0 | \$35,287 | \$0 | \$0 | \$0 |
| 9 | Chevy Chase View | \$0 | \$74,985 | \$41,275 | \$31,538 | \$9,738 |
| 10 | Chevy Chase Village | \$0 | \$179,081 | \$100,524 | \$75,319 | \$25,206 |
| 11 | Town of Chevy Chase | \$0 | \$230,768 | \$130,297 | \$97,058 | \$33,239 |
| 12 | Drummond | \$0 | \$8,381 | \$4,613 | \$3,525 | \$1,088 |
| 13 | Friendship Heights | \$0 | \$102,097 | \$82,625 | \$42,940 | \$39,685 |
| 14 | Gaithersburg | \$0 | \$2,059,474 | \$1,168,467 | \$866,183 | \$302,283 |
| 15 | Garrett Park | \$0 | \$88,063 | \$47,593 | \$37,038 | \$10,555 |
| 16 | Glen Echo | \$0 | \$37,713 | \$20,762 | \$15,862 | \$4,900 |
| 17 | Kensington | \$0 | \$228,769 | \$137,523 | \$96,217 | \$41,306 |
| 18 | Laytonsville | \$0 | \$23,598 | \$12,991 | \$9,925 | \$3,066 |
| 19 | Martin's Additions | \$0 | \$48,740 | \$26,832 | \$20,499 | \$6,333 |
| 20 | North Chevy Chase | \$0 | \$43,447 | \$23,918 | \$18,273 | \$5,645 |
| 21 | Oakmont | \$0 | \$5,955 | \$3,278 | \$2,505 | \$773 |
| 22 | Poolesville | \$0 | \$382,642 | \$210,634 | \$160,933 | \$49,701 |
| 23 | Rockville | \$0 | \$4,115,293 | \$2,116,671 | \$1,730,829 | \$385,843 |
| 24 | Somerset | \$0 | \$96,178 | \$52,560 | \$40,451 | \$12,109 |
| 25 | Takoma Park* | \$0 | \$3,661,301 | \$3,513,643 | \$1,539,887 | \$1,973,756 |
| 26 | Washington Grove | \$0 | \$81,601 | \$44,922 | \$34,320 | \$10,602 |
| 27 | TOTAL | \$0 | \$11,571,446 | \$7,776,720 | \$4,851,636 | \$2,925,084 |

¹¹ Council staff has requested that OMB clarify this number, which is slightly higher than the \$4,847,006 that Council staff calculates as the duplicated tax portion of the reimbursement payments made to municipalities. In any case, the calculation discrepancy is very small in comparison to the amounts involved.

¹²In the FY13 Recommended Operating Budget, the Municipal Tax Duplication Budget was broken into two components—the FY13 Property Tax Duplication and Additional County Grant. The difference between the actual appropriation and the duplicated tax portion was characterized as the additional county grant portion of the budget.

Under State law, in determining the amount of the setoff, the county **must consider** (1) the services and programs that are performed by the municipal corporation instead of similar county services and programs; and (2) the extent that the similar services and programs are funded by property tax revenues.¹³ The County **may** decide to limit its payments to municipalities to the property tax funded portion of the amount the County would expend if it were providing the services.¹⁴

Limiting the appropriation to the duplicated tax amount would affect municipalities to varying degrees.¹⁵ Implementing such a limitation could disrupt the current service delivery system in municipalities that are heavily dependent upon the payments from the County.¹⁶

Staff recommends against amending Chapter 30A to limit payments to municipalities to the amount of the duplicated tax. Such an amendment to the law would unnecessarily limit the Council's discretion to make greater appropriations to municipal governments. Should the Committee be interested in further pursuing this potential change to County law, Staff's recommendation would be to request a detailed review of municipal services most likely to be affected by reduced funding, and of the County service delivery system's ability to absorb any new demand for County services that would result from changes to the municipal service delivery system.

Alternative 2: Amending County law to allow municipal services to qualify for reimbursement in situations in which both the County and the municipality provide the otherwise reimbursable service within the municipality.

Under §30A-2, in order to qualify for county reimbursement, a municipal public service must satisfy four requirements, one of which is that the "service is not actually provided by the county within the municipality." In a 2008 legal memorandum, Associate County Attorney Scott Foncannon concluded that "Montgomery County is not required to reimburse a municipality that has a municipal police force or to grant a tax setoff where Montgomery County also provides police department services in the municipality." *See 2008 Legal Memorandum, at © 16-21.*

This requirement was discussed during the deliberations of the Municipal Revenue Sharing Task Force. *See Page 36 of the 2012 Report at © 15.* Municipal representatives felt that the County should provide an operating subsidy to support the activities of the municipal police

¹³ Maryland Tax-Property §6-305(d).

¹⁴ County Attorney memorandum, August 30, 2002: "State law would not prevent the County from limiting the payment made to a municipality to the portion of the County's general revenue fund derived from property taxes collected from the municipalities and used to fund County services. However, State law only sets a baseline payment to a municipality and does not preclude a county from providing a more generous payment to its municipalities if the payments serve a public purpose."

¹⁵ For example, this limitation would have reduced the County's FY13 payment to Takoma Park by 56%, whereas it would have reduced the County's FY13 payment to Rockville by only 18%. If the reimbursement payment to Takoma Park had been limited to the duplicated tax amount, Takoma Park's FY13 General Fund revenues would have been reduced by 9%.

¹⁶ *Office of Legislative Oversight Report 2008-5* found that overall, reimbursement payments represented 5% of total revenues for municipalities located in the County in FY06/FY07; in contrast, the reimbursement payment comprised 18% of general fund revenues for the City of Takoma Park in FY06. Takoma Park continues to fund a significant portion of its municipal budget with reimbursement payments—in FY13, reimbursement payments comprised more than 16% of Takoma Park's General Fund revenues.

services in Rockville, Gaithersburg, and Chevy Chase Village. County representatives felt that further consideration of such a grant or subsidy was inappropriate because it would require all County residents to subsidize municipal police services.

Staff recommends against amending Chapter 30A to allow municipal services to qualify for reimbursement in situations in which both the County and the municipality provide the otherwise reimbursable service within the municipality. To do so would result in a different tax fairness problem—that is, non-municipal taxpayers would be paying General Fund property taxes to the County that would both support the County’s service (e.g., police service) within a municipality, and a grant payment to the municipality to cover a portion of the municipality’s cost of providing that same service.¹⁷

Alternative 3: Amending County law to allow use of tax rate differentials instead of tax duplication payments (i.e., reducing tax rates for residents within a municipality rather than making municipal tax duplication payments to the municipal government).

The last alternative under consideration is amending §30A-6 to allow the use of tax rate differentials instead of tax duplication payments.¹⁸ A tax rate differential system would address the tax duplication problem by setting different County property tax rates for each municipality. This would reduce the total General County property tax rate paid by all of the property owners in each municipality by the amount of the tax duplication payment that would have been due to each municipal government. The County could simultaneously set a differential tax rate and continue to make grant payments to municipalities.¹⁹

The purpose of the law is to address tax fairness issues that arise when a taxpayer is taxed twice for a service that she receives only once. That problem can be addressed in multiple ways, including through the current system of payments to municipalities, or by setting a lower tax rate in the municipalities. An advantage of reducing the tax rate is that it is more transparent than the current system of reimbursement payments. This additional transparency could make it easier for municipal taxpayers to make the connections between the rates that they are required to pay and the services that they receive.

Staff recommends further consideration of amending Chapter 30A to allow the County to charge a lower property tax rate within any municipality. Reducing the County property tax charged to municipal residents by the amount of the duplicated tax is consistent with the purpose of the law, and would improve transparency for non-municipal and municipal residents. Staff

¹⁷It is notable that the 1973 Task Force had explored the idea that one way to address the municipal tax duplication problem was for the County to take over providing the duplicative services in the municipalities (“Several methods of overcoming tax inequities have been explored. One of these is the assumption by the County of service currently performed by municipalities.”).

¹⁸ According to the Task Force report, using tax rate differentials (rather than tax duplication payments) would increase the workloads of the Finance Department and Office of Management and Budget. However, the change would also improve the transparency of taxation, reduce the burden of general County property taxes on municipal property owners, and allow municipalities to set property tax rates that more accurately reflect the services that those municipalities provide to their residents.

¹⁹ Using Takoma Park as an example, Staff calculates that in FY13 such an option could have resulted in a County property tax rate that is \$0.079 to \$0.180 below the current county property rate inside Takoma Park. This is calculated by using the following assumptions: an assessable base of \$1,948,074,014; a County General Fund tax rate of \$0.724 per \$100; a duplicated tax amount of \$1,539,887; and a total reimbursement payment of \$3,513,643.

recommends that further consideration be given to how a system that involved both tax differentials and grant payments to municipalities might be administered.

Contents:

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| 1 | 1973 Task Force Report and Appendices |
| 10 | DLS Report, Exhibit 2 |
| 11 | Tax-Property 6-305 |
| 14 | 2012 Task Force Report, Page 30 |
| 15 | 2012 Task Force Report, Page 36 |
| 16 | County Attorney Memorandum, 2008 |
| 22 | Chapter 30A, Montgomery County Code |

Office Of The County Executive

MEMORANDUM

Date May 25, 1973

To County Council
From James P. Gleason, County Executive
Subject: Montgomery County Municipal Revenue Program

Over the past year, I have explored with the Municipal Advisory Board possible inequities existing in the taxes paid by municipal and non-municipal County residents. We have concluded after careful analysis that municipal citizens pay twice for certain services - to the County and to their local jurisdiction - while receiving these services only from the municipality.

I am proposing, therefore, a new "Montgomery County Municipal Revenue Program" to overcome this inequity. Under this program, the County would return annually to each municipality an amount equal to the estimated duplicated taxes paid by its residents for eligible services. The approximate impact in FY 74 on municipalities would vary from a minimum of \$1,000 to a high of \$190,000-\$200,000 depending on final calculations using FY 73 data. The total cost to the County in FY 74 is estimated at \$260,000-\$300,000.

To establish this new initiative in intergovernmental relations, new legislation must be added to the Montgomery County Code. My proposed legislation, attached herewith, would establish the program; provide that the County, subject to budgetary constraints, shall reimburse municipalities for duplicated taxes paid by their residents; and set forth criteria for determining eligible services. No law exists at present to enable the County to begin such a program.

While I am not proposing this as emergency legislation, I urge the Council to expedite deliberations on this bill in order that once it becomes effective a supplemental appropriation, to be funded from unappropriated surplus earmarked by the Council, can be acted upon and payments can be made to the municipalities in the fall.

SUMMARY

MONTGOMERY COUNTY MUNICIPAL REVENUE PROGRAM

May 29, 1973

PROJECT BACKGROUND

- Have attempted to identify services for which municipal residents may be paying twice;
- Have focused on street-related services;
- Proposal ready for Council action.

PROPOSAL FOR FY 74:

- Grant to municipalities, whichever is greater:
 - \$1,000, or
 - Two-thirds the amount the municipality must raise from its own taxes to provide the eligible services.
- In future years, County will take over performance of services upon municipality's request by October 1 of preceding FY;
- Grant requires legislation and supplemental appropriation.

SCHEDULE

- May: submission of legislation to County Council.
- June - July: Council deliberations, enactment.
- August - September: submission of FY 73 data by municipalities.
- September: legislation effective.
- September: submission of supplemental appropriation request by County Executive.
- October: passage of supplemental appropriation and payments to municipalities.

FINAL REPORT ON THE MONTGOMERY COUNTY MUNICIPAL REVENUE PROGRAM

Prepared for Presentation at Meeting of
May 24, 1973 With Representatives of the Municipalities Advisory Board

Since the February meeting, the County staff, with the assistance of municipal officials, has refined its analysis of possible tax duplications existing between the County and municipalities. The results of that effort are shown on the attached pages. This report has been prepared to supply municipal representatives with the findings to date and to serve as a final proposal, outlined below, for removing the tax inequities found to exist.

Additional analysis has supported the initial conclusion that tax duplication was limited to the service areas of street maintenance, curb and gutter work, sidewalk repair, snow removal, street lighting, and traffic control. Municipal net expenditures for these services in FY 72, from local funds and after the deduction of applicable shared revenues, ranged from \$-0- to \$283,450, for a total of \$379,900. These net expenditures in many cases include provision of a service level comparable to that of the County, supplementary levels of service desired by municipal residents, and/or diseconomies related to the municipalities' smaller size. Consequently, further adjustments as described in Appendix B on Methodology, beyond the deduction of shared revenues, must be made to determine the extent of actual tax duplication.

Several methods of overcoming tax inequities have been explored. One of these is the assumption by the County of service currently performed by municipalities. Another is a direct grant from the County to municipalities in an amount calculated to remove the inequity. In the latter case, it should be pointed out that County legislation will be required, in addition to a budget appropriation, before such grants can be paid.

As a result of the County staff's analysis, the data presented in Appendix A illustrate the method of calculation and the impact on the municipalities. The amounts in the "Impact" columns assume a grant to each municipality of \$1,000 or two-thirds of net expenditures for street-related services, the two-thirds factor being used to recognize that any grant would be smaller than the net expenditures (except for the \$1,000 floor) because of municipal supplementary service or diseconomies.

The final proposal is as follows:

1. The County will assume at the beginning of the FY (July 1) the performance of any or all of the street-related services considered in this study upon request of the municipality provided the request is made in writing no later than the preceding October 1st; or
2. The County will provide a direct grant of the following amounts, whichever is greater:
 - a. \$1,000; or
 - b. the estimated tax overlap defined as two-thirds the amount which a municipality must raise from its own taxes to provide the eligible services.

Calculations of the direct grant for FY 74 will be made by the County based on FY 73 data supplied by the municipalities in a form and manner prescribed by the County.

In order for grants to be paid, legislation will be proposed to the County Council for enactment this summer. Subsequent to passage of the legislation, a supplemental appropriation will be recommended by the County Executive. The amount and timing of this supplemental will depend in part on timely receipt from the municipalities of data for year ending June 30, 1973. Assuming passage of the supplemental appropriation, payments would be made to the municipalities.

Appendix A
MONTGOMERY COUNTY MUNICIPAL REVENUE PROGRAM #1

| Municipality | Calculation of Overlap | | | | | | | Impact of County Grant Proposal (Illustr. only) | | Mun. Tax Rate Equiv. | |
|----------------------|------------------------|-----------------------|-----------------|------------------|-------------------------------|-----------------------------------|------------------|---|---------------------------------------|----------------------|-------|
| | Road-Ways | Signs Traffic Devices | Street Lighting | Total Expend | Less: Shared Gas, Racing Rev. | Less: Shared Inc. Tax, Other Rev. | Est. Net Expend. | Amt. Tax Discon. Suppl. Serv. c/ | Est. Overlap County Level of Serv. c/ | | |
| Barnesville | 167 | | 1,021 | 1,188 | (713) | (254) | 221 | 74 | 147 | 1,000 | 15c |
| Brookeville | 4,075 | | 700 | 4,775 | (482) | (4,186) | 107 | 36 | 71 | 1,000 | 18c |
| Chevy Chase #3 | 5,746 | 173 | 1,657 | 7,576 | (3,755) | (1,785) | 2,036 | 678 | 1,356 | 1,360 | 2c |
| Chevy Chase #4 | 36,878 | 1,915 | 6,115 | 44,908 | (10,025) | (13,872) | 21,011 | 6,997 | 14,014 | 14,010 | 7c |
| Chevy Chase Village | 6,640 | | 10,119 | 16,759 | (15,272) | (700) | 787 | 262 | 525 | 1,000 | 4/10c |
| Martin's Add. Ch. Ch | 6,616 | | 2,189 | 8,805 | (6,249) | (1,215) | 1,341 | 447 | 894 | 1,000 | 1c |
| Vill of N. Ch. Ch. | 7,639 | | 1,411 | 9,050 | (3,446) | (242) | 5,361 | 1,786 | 3,575 | 3,580 | 9c |
| Galthersburg | 87,748 | 2,503 | 15,152 | 105,403 | (34,193) | (34,234) | 36,976 | 12,313 | 24,663 | 24,660 | 2c |
| Garrett Park | 9,789 | | 2,120 | 11,909 | (9,037) | (1,614) | 1,258 | 419 | 839 | 1,000 | 2c |
| Glen Echo | 485 | 499 | 1,702 | 2,686 | (2,282) | (152) | 252 | 84 | 168 | 1,000 | 7c |
| Kensington | 73,792 | 400 | 11,731 | 85,923 | (15,160) | (77,763) | b/ (7,000) | (2,331) | (4,669) | 1,000 | 4/10c |
| Laytonsville | 946 | | 1,404 | 2,350 | (1,160) | (1,253) | b/ (63) | (21) | (42) | 1,000 | 6c |
| Oakmont | 8 | | 493 | 501 | (299) | (485) | b/ (283) | (94) | (189) | 1,000 | 10c |
| Poolesville | 544 | | 1,988 | 2,532 | (1,613) | (860) | 60 | 20 | 40 | 1,000 | 2c |
| Rockville | 408,151 | 75,709 | 100,300 | 584,160 | (194,860) | (105,850) | 283,450 | 94,389 | 189,061 | 189,060 | 5c |
| Somerset | 15,559 | | 3,737 | 19,296 | (4,948) | (4,476) | 9,872 | 3,288 | 6,584 | 6,580 | 5c |
| Takoma Park | 64,452 | 1,151 | 23,754 | 89,357 | (59,121) | (5,516) | 24,720 | 8,232 | 16,488 | 16,490 | 3c |
| Washington Grove | 3,588 | | 1,716 | 5,304 | (5,353) | (159) | b/ (208) | (69) | (139) | 1,000 | 2c |
| TOTAL | 732,823 | 82,350 | 187,309 | 1,002,482 | (367,968) | (254,616) | 379,898 | 126,510 | 253,388 | 266,740 | - |

a/ Prepared by Montgomery County Budget and Research Section, February - May 1973. See Appendix on Methodology for explanation of calculations.

b/ Negative amount indicates no local tax funds required.

c/ See appendix on Methodology.

Median Grant \$1,000

Median Tax Rate Equivalent 3c

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Appendix B

MONTGOMERY COUNTY MUNICIPAL REVENUE PROGRAM METHODOLOGY AND GENERAL COMMENTS

In the Fall of 1972, County Executive James P. Gleason directed the Montgomery County Budget and Research Section to examine, with the assistance of the County's municipalities, local government services and fiscal burdens affecting residents of municipalities compared with County citizens living outside incorporated areas. This study originated in the growing concern on the part of the County Executive and municipal officials that municipal residents were suffering a tax inequity by being taxed twice, once by the County and again by their municipal government, but receiving services only once.

Drawing primarily on the FY 1972 State Fiscal Research Bureau reports and other supplementary information submitted by the municipalities, as well as on the assistance of the County Departments of Transportation and Finance, the Budget Office has attempted over the past several months to clarify both service and fiscal situations currently affecting municipal residents vis-a-vis their non-municipal counterparts. The examination has focused on four aspects: a) the determination of service areas where tax duplication may exist; b) the calculation of the estimated overlaps; c) the development of alternatives to overcome duplications and d) the fiscal impact, on both the County and the municipalities, of the various alternatives. The methodology and certain general comments on each of these aspects are outlined below in support of the data and conclusions shown in the preceding portions of this report.

Determination of Service Areas Where Tax Duplication Exists:

The examination of services centered on identifying those for which municipal residents were paying both to the County and to their local government but which were being provided only by the municipalities; i.e., those for which tax duplication existed. The following criteria were used:

1. Municipal "General Government" and "Miscellaneous" activities (the latter including insurances and miscellaneous items) were excluded on the grounds that these are a basic requirement for citizens wanting their own special local government.

2. Only municipal services which correspond to County General Fund - financed services were eligible for consideration since residents of incorporated areas neither receive services from, nor pay taxes to, special districts such as the Suburban District or in certain cases, the Recreation District.
3. Only municipal services which correspond to tax-supported County services were eligible since municipal residents' taxes are not used to finance self-supporting County activities such as protective inspections, animal control, and refuse collection.
4. Only levels of municipal service comparable to that provided by the County outside incorporated areas would be eligible. Expenditures for supplementary levels or for diseconomies related to the municipalities' smaller size were considered the responsibility of municipal residents. An example is the police service provided by several municipalities which was considered supplementary to that supplied by the County both inside and outside local boundaries.

These criteria were applied in the review of both municipal and County services in the search for possible tax overlaps. It should be noted here that the existence of similarly-named functions in both the County and a municipality does not necessarily mean that duplication exists or that municipal residents receive no benefit from the County service. Many County services, such as environmental protection, regardless of the location of specific projects, affect the general condition of the County and have "spill-over" benefits to incorporated areas. Consequently, they should be supported in part by County tax revenue from municipal residents.

Based on this analysis, tax duplication appeared to exist in the service areas of street maintenance, curb and gutter work, sidewalk maintenance and snow removal - all of which are included in the Roadways category in Appendix A of this report. In addition, traffic control and street lighting were involved.

Calculation of Estimated Tax Duplication or Overlap

Tax duplication was defined to mean that amount of local funds that municipalities must raise from their own resources to provide the County level of service within their boundaries. To reach this figure, total municipal expenditures for the services listed above were compiled. Certain deductions were then made. These deductions are based on the fact that because they are in existence, and perform certain services, municipalities are entitled by law to receive certain shared revenues which otherwise would go to the County.

These revenues include State-shared gasoline tax and motor vehicle registration revenue and State-shared racing revenue, both of which are ear-marked for use on street-related services. In addition, a portion of County-shared income taxes, traders' permit fees, admission/amusement taxes, and payments in-lieu-of bank shares taxes, all of which may be used as municipalities choose, are distributed to municipalities instead of to the County. The sharing of these revenues with municipalities reduces the funds that must be raised from local sources for street-related services, and in effect represents a return to municipalities of all or a portion of the County taxes their residents pay for the County level of those same services. Therefore, to derive the net expenditures for the services in question, applicable portions of ear-marked and other shared revenues were subtracted from total expenditures for those services. (In several cases, at least in FY 72, negative amounts resulted indicating that shared revenues more than covered municipal expenditures with no local funds required).

One other calculation must be made at this point to determine what portion of the net expenditures is due to diseconomies resulting from the municipalities' smaller size or to the provision of supplementary levels of service. This can be found by comparing the total expenditures of a municipality for the services in question with the estimated cost to the County of providing the County level of service within that municipality, finding the percentage that the difference represents of the municipality's total street expenditures, and multiplying that percentage times the net expenditures. This will determine that portion of the net expenditures attributable to diseconomies or supplementary service. The balance is the amount of overlap resulting from the provision by the municipality of the County's level of service within its own boundaries. It is this latter amount which represents the degree of tax inequity existing. (Note: If a municipality spends less than the estimated cost to the County of providing the service, the difference would result from the provision of a lower level of service or the same level more efficiently.)

The above calculations assume the availability of accurate, comparable data from the County and the municipalities. Experience has indicated that such information would be very difficult to come by. Therefore, a factor of two-thirds was applied against net expenditures to estimate the municipality's expenditures to provide the County level of service. The remaining one-third is assumed to represent that portion of net expenditures related to diseconomies of scale or supplemental levels of service. These calculations notwithstanding, a minimum grant of \$1,000 is proposed. This "floor" recognizes the efforts made by municipalities and the possibility that the fiscal data available, no matter how accurate, might not fully describe those efforts.

Development of Alternatives for Overcoming Existing Inequities

Several means were explored of reducing or eliminating tax duplications found to exist. One method would be the assumption by the County of services currently provided by municipalities. This would be beneficial to residents of incorporated areas in those cases where the County, due to economies of scale, could provide the service at lower cost. On the other hand, if municipal residents want a higher level of service than the County normally provides, they might want to continue supplying the service themselves. In addition, many of the same men and pieces of equipment are used by municipalities to provide services which the County provides via the Suburban District Fund, e.g., street cleaning and tree care. For municipalities to request these services from the County, they would need to pay the Suburban District tax (8¢ in FY 73).

An alternative to County assumption of municipal services is the payment of direct grants to municipalities in an amount calculated to overcome the tax inequities. The calculation of the inequities is discussed above; the amount of the grants would be the same unless adjusted by provision of a minimum or maximum limit.

Fiscal Impact of Grants

The fiscal impact on municipalities, both the dollar amount and the local tax rate equivalent, is shown on Appendix A for an illustrative proposal that would provide a \$1,000 floor payment or two-thirds the net expenditures made for streets. The total impact on the County of the illustrative proposal would be approximately \$267,000.

Exhibit 2
2011 Survey on County/Municipal Tax Differentials and Rebates

| County | Municipal Corporations | (1) Sec. 6-305 | (2) Sec. 6-306 | Tax Differential | Tax Rebate |
|-----------------|------------------------|-------------------|-------------------|---------------------|---------------|
| Allegany | Y | Y | N | Y | N |
| Anne Arundel | Y | Y | N | Y | N |
| Baltimore City | N | N | N | N | N |
| Baltimore | N | Y | N | N | N |
| Calvert | Y | N | Y | Y | N |
| Caroline | Y | N | Y | Y | N |
| Carroll | Y | N | Y | N | Y |
| Cecil | Y | N | Y | N | Y |
| Charles | Y | N | Y | Y | N |
| Dorchester | Y | N | Y | Y | Y |
| Frederick | Y | Y | N | N | Y |
| Garrett | Y | Y | N | Y | Y |
| Harford | Y | Y | N | Y | Y |
| Howard | N | Y | N | N | N |
| Kent | Y | N | Y | N | Y |
| Montgomery | Y | Y | N | N | Y |
| Prince George's | Y | Y | N | Y | Y |
| Queen Anne's | Y | N | Y | N | N |
| St. Mary's | Y | N | Y | N | Y |
| Somerset | Y | N | Y | N | Y |
| Talbot | Y | N | Y | Y | N |
| Washington | Y | N | Y | Y | N |
| Wicomico | Y | N | Y | N | N |
| Worcester | Y | N | Y | N | N |

Key: Y indicates yes; N indicates no

Note: (1) Section 6-305 of the Tax-Property Article requires an annual meeting between county and municipality. Property tax differentials or rebates are mandated if a municipality provides a service in lieu of similar county services.

(2) Section 6-306 of the Tax-Property Article requires an annual meeting between county and municipality, but property tax differentials or rebates are optional.

Source: Department of Legislative Services

Article - Tax - Property

[Previous][Next][Another Article]

§6-305.

(a) In this section, "tax setoff" means:

(1) the difference between the general county property tax rate and the property tax rate that is set for assessments of property in a municipal corporation; or

(2) a payment to a municipal corporation to aid the municipal corporation in funding services or programs that are similar to county services or programs.

(b) This section applies only in:

- (1) Allegany County;
- (2) Anne Arundel County;
- (3) Baltimore County;
- (4) Frederick County;
- (5) Garrett County;
- (6) Harford County;
- (7) Howard County;
- (8) Montgomery County; and
- (9) Prince George's County.

(c) The governing body of the county shall meet and discuss with the governing body of any municipal corporation in the county the county property tax rate to be set for assessments of property in the municipal corporation as provided in this section. After the meeting if it can be demonstrated that a municipal corporation performs services or programs instead of similar county services or programs, the governing body of the county shall grant a tax setoff to the municipal corporation.

(d) Except as provided in subsection (k) of this section, in determining the county property tax rate to be set for assessments of property in a municipal corporation, the governing body of the county shall consider:

(1) the services and programs that are performed by the municipal corporation instead of similar county services and programs; and

(2) the extent that the similar services and programs are funded by property tax revenues.

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(e) The county property tax rate for assessments of property located in a municipal corporation is not required to be:

(1) the same as the rate for property located in other municipal corporations in the county; or

(2) the same as the rate set in a prior year.

(f) (1) At least 180 days before the date that the annual county budget is required to be approved, any municipal corporation in the county that desires that a tax setoff be provided shall submit to the county a proposal that states the desired level of property tax setoff for the next fiscal year.

(2) (i) A request submitted under paragraph (1) of this subsection shall be accompanied by:

1. a description of the scope and nature of the services or programs provided by the municipal corporation instead of similar services or programs provided by the county; and

2. financial records and other documentation regarding municipal revenues and expenditures.

(ii) The materials submitted under subparagraph (i) of this paragraph shall provide sufficient detail for an assessment of the similar services or programs.

(3) After receiving a proposal from a municipal corporation requesting a tax setoff under this subsection, the governing body of the county shall promptly submit to the municipal corporation financial records and other documentation regarding county revenues and expenditures.

(g) (1) At least 90 days before the date that the annual county budget is required to be approved, the county and any municipal corporation submitting a tax setoff request under subsection (f) of this section shall designate appropriate policy and fiscal officers or representatives to meet and discuss the nature of the tax setoff request, relevant financial information of the county and municipal corporation, and the scope and nature of services provided by both entities.

(2) A meeting held under paragraph (1) of this subsection may be held by the county representatives jointly with representatives from more than one municipal corporation.

(3) (i) The county officers or representatives may request from the municipal corporation officers or representatives additional information that may reasonably be needed to assess the tax setoff.

(ii) The municipal corporation officers or representatives shall

provide the additional information expeditiously.

(h) (1) At or before the time the proposed county budget is released to the public, the county commissioners, the county executive of a charter county, or the county council of a charter county without a county executive shall submit a statement of intent to each municipal corporation that has requested a tax setoff.

(2) The statement of intent shall contain:

(i) an explanation of the level of the proposed tax setoff;

(ii) a description of the information or process used to determine the level of the proposed tax setoff; and

(iii) an indication that, before the budget is enacted, appropriate officials or representatives of the municipal corporation are entitled to appear before the county governing body to discuss or contest the level of the proposed tax setoff.

(i) Representatives of each municipal corporation in the county requesting a tax setoff shall be afforded an opportunity to testify before the county governing body during normally scheduled hearings on the county's proposed budget.

(j) Notwithstanding the provisions of subsections (d), (f), and (g) of this section:

(1) a county and one or more municipal corporations may enter into an agreement setting different terms or timing for negotiations, calculations, or approval of a tax setoff; and

(2) a county may grant a tax setoff to a municipal corporation that does not make a request in the fashion described in this section.

(k) In Frederick County, for the taxable years that begin July 1, 2011, and July 1, 2012, the governing body of Frederick County shall grant a tax setoff to a municipal corporation in an amount that:

(1) is no less than the tax setoff granted to that municipal corporation for the preceding taxable year; and

(2) increases by the same percentage by which the county property tax rate exceeds the constant yield tax rate.

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registered vehicles in the County and that would result in additional money allocated to the County. The allocation of HUR to the municipalities for FY 2012 is 0.4%. The allocation of HUR for FY 2013 is the same amount as 2012 for both the Counties and the municipalities.

(3) *Property Tax Duplication Portion v. Grant Portion*

The third point of disagreement concerns how the reimbursement for property tax duplication should be depicted in the County's budget books. This point of disagreement relates to all reimbursement payments and not just road maintenance reimbursement payments.

County representatives believe that the budget books should reflect that there are two parts to the reimbursement payment: (1) a property tax duplication payment that is required by State law; and (2) an additional payment that is required by County law and is best described as a grant. See *Section 4.1* of this report for further discussion of this issue.

The County representatives believe that calculating reimbursement payments based on County costs, rather than actual property tax duplication, requires residents who do not live in municipalities to subsidize the municipal services, rather than merely reimbursing municipalities for the duplicative property taxes paid by municipal residents (in the road maintenance service category as well as all other service categories). The County representatives want the County's annual budget documents to reflect that the current payment methodology consists of a tax duplication component and a component unrelated to duplicative taxes (i.e., a component that would most properly be classified as a grant). The proposal made by County representatives would entail calculating the County's cost of providing road maintenance services and then showing, in the annual budget documents for the tax duplication program, the portion of the cost for which the County will provide a property tax duplication payment and the portion of the cost that reflects a County grant to the municipalities.

In response to the County's proposed depiction of the road maintenance payment, the municipalities note that County law does not specify the source of the funds for services for which payment is being made. Rather, the basis for the road maintenance payment is a cost of service methodology. Additionally, the County receives revenues from a variety of sources to fund the services it provides. How the County allocates unrestricted revenue sources for its budgeting purposes is a discretionary decision. Because there is no clear cut mechanism to determine which County services are funded by property taxes and which are not, any characterization of a property tax funded portion of road maintenance services would therefore be arbitrary and misleading. For all these reasons, the municipalities believe it is inappropriate to break out the road maintenance payment into a "property tax-funded portion" and a "grant-funded portion."

(4) *Debt Service for Capital Projects*

The fourth area of disagreement concerns how capital expenses for roads are calculated. The County and municipalities disagree about the method to be used to calculate the actual cost of County roads. The current methodology for calculating road maintenance reimbursement

established minimum level, the PPT is reduced as officers spend more of their shift addressing calls for service; customer service to the residents calling 911 is not affected.

Within this staffing model, the existence of the municipal police departments cannot be and is not considered. MCPD does not control the staffing of its allied agencies (e.g., municipal police departments). To consider their complement of officers in the model would allow understaffing to occur if policies, procedures, or deployment priorities changed at the municipal level.

MCPD reviewed the data provided by Chief King regarding staffing levels in the 6th District and concluded that the district was not understaffed (see **Appendix 30**). MCPD understands that it would experience an increased workload if the municipal police departments stopped providing first responder services, and that the increased workload could lead to increased response times. Nonetheless, MCPD maintains a comparable level of resources in all Districts, including those with municipalities, and plans to do so in the future.

The County members noted that Chevy Chase Village, Gaithersburg, and Rockville are different from Takoma Park, which has had a unique arrangement with MCPD for many decades. If Chevy Chase Village, Gaithersburg, and Rockville assumed sole responsibility for their police services like Takoma Park has done, the County would compensate them for those services that the County would no longer provide. However, until the municipalities take that step, the County members believe that no tax duplication payment is justified. The County members believe that the law governing tax duplication does not authorize payment for police services to those jurisdictions, and payments beyond those authorized under the tax duplication program would constitute a subsidy of municipal services by other County taxpayers.

The municipalities stressed that the MCPD would experience an increased workload if the municipal police departments stopped providing first responder services, which would likely lead to slower response times. In light of this, the services provided by the police departments of Rockville, Gaithersburg, and Chevy Chase Village directly benefit County residents for which the municipal representatives believe they should receive some type of financial benefit from the County.

Given the impediment posed by the current provisions of §30A-2 of the County Code in providing a tax duplication payment to Rockville, Gaithersburg, and the Village of Chevy Chase, the municipal representatives requested that the County Executive consider an operating subsidy or some other means to support the activities of these municipalities' police services. Such a subsidy was within the scope of the Task Force, which was broader than tax duplication payments. The municipal representatives were disappointed that their request was not considered by the County as part of the group's work.

The County representatives felt that further consideration of a grant to Gaithersburg, Rockville, and Chevy Chase Village for police services was inappropriate because it would require all County residents to subsidize municipal police services.

Appendix 8: County Attorney Advice on Legal Requirements



2008 JUL 2 AM 11:14

Isiah Leggett
County Executive

OFFICE OF THE COUNTY ATTORNEY

Leon Rodriguez
County Attorney

AMENDED MEMORANDUM

CONFIDENTIAL CLIENT COMMUNICATION

TO: Kathleen Boucher
Assistant Chief Administrative Officer
Offices of the County Executive

VIA: Karen Federman-Henry, Chief
Division of Finance and Procurement

FROM: Scott R. Foncannon 
Associate County Attorney

DATE: July 1, 2008

RE: County's obligation for municipal revenue reimbursement for municipal police department services within Montgomery County

This memorandum amends the previous memorandum dated June 6, 2008, on this issue. I was asked to add a reference to Chevy Chase Village to the memorandum.

Issue

You have asked this office to give you a written opinion on whether Montgomery County is required to reimburse municipalities that have a municipal police force under County law or grant a tax setoff to those municipalities under state law.

Answer

For the reasons stated below, Montgomery County is not required to reimburse a municipality that has a municipal police force or to grant a tax setoff where Montgomery County also provides police department services in the municipality.

101 Monroe Street, Rockville, Maryland 20850-2580
(240) 777-6795 TTD (240) 777-2545 • FAX (240) 777-6705 • scott.foncannon@montgomerycountymd.gov

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Facts

In January of 2007, the Montgomery County Executive, Isiah Leggett, requested the formation of a municipal revenue sharing task force (Task Force). As a result of this request, the Task Force, consisting of both County and municipal representatives, was formed to discuss tax duplication and revenue sharing issues between the County and the municipalities located within the County. During the course of discussions among the County representatives on the Task Force on the issue of revenue sharing with municipalities that had a municipal police force, the question arose as to whether the County was legally obligated to make a tax duplication payment or to grant a tax setoff to the City of Rockville, the City of Gaithersburg, or Chevy Chase Village under existing County or State law for the cost of their municipal police services. I was advised that the County provides police services and coverage in all three districts where these municipalities are located, as if the municipal police departments did not exist and that County Police Officers are dispatched to calls in all three municipalities. In addition, the County provides other law enforcement services to all of these municipalities including, but not limited to, police recruit training at the County training academy, computerized dispatch, emergency response team coverage, 911 center operations, crime scene and forensic specialist, crime lab services and special investigation divisions. In light of the fact that the County provides police services in these municipalities, the question was asked whether, based on the language of the County Code and the State Code, the County is legally required to make any reimbursement to the municipalities for the police department services provided by these municipalities.

Legislative History of Tax Duplication Payments

Since the 1950's there have been statewide discussions about State and local legislation to create tax duplication payments by Counties to municipalities. In 1972 the County Council commissioned a study to determine the service areas where tax duplication might exist, calculate the estimated overlap, develop alternatives to overcome duplication and to determine the fiscal impact on both the County and the municipalities. This report concluded, among other things, that tax duplication was limited primarily to street maintenance. In 1973 Montgomery County enacted Chapter 30A of the Montgomery County Code that established a "program to reimburse municipalities ...for those public services provided by municipalities which would otherwise be provided by the County government." This code section has remained unchanged since 1973.

In 1977 the County Council established a joint Task Force on County-Municipal Financial Relationships to examine the formula used to provide payments to the municipalities. The Task Force report revised the formula for municipal rebates and the County Council established a new procedure for reimbursement to the municipalities by resolution dated October 17, 1978. A similar task force was appointed by the County Council in 1981 and again in 1995 to study and review tax duplication issues and to report their findings to the Council. One of the findings of the 1995 Task Force concluded that "Municipal police services provided were

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determined to be supplemental warranting no reimbursement.”

Meanwhile in 1975 the State passed tax duplication legislation that is now codified in Section 6-305 of the Tax-Property Article, Annotated Code of Maryland. The original text of the law applied to Montgomery County and was permissive. In 1985 the State revised the law and made it mandatory that the County grant a “Tax Setoff” to municipalities to “aid the municipal corporation in funding services or programs that are similar to county services or programs.” TP§6-305(a)(2). Under State law the County is required to consider “the services and programs that are performed by the municipal corporation instead of similar county services and programs;...” TP§6-305(d)(1).

Further details of the legislative history appear in a memorandum dated August 30, 2002, from this Office to the Director, Office of Management and Budget. The memorandum is attached for your reference.

Statutory Instruction and Interpretation

The Appellate courts in the State of Maryland have repeatedly explained that the goal of statutory construction is to discern and effectuate the legislature’s intent. The Maryland Court of Special Appeals summarized these rules in *Maryland-National Capital Park and Planning Commission v. State Depart.*, 110 Md. App. 677, 688, 678 A.2d 602, 607 (1996):

Ever mindful of our desire to discern and effectuate the General Assembly’s intent, *Oaks v. Connors*, 339 Md. 24, 35, 660 A.2d 423 (1965), we examine the language of the enactment and give to the language its natural and ordinary import, *Montgomery County v. Buckman*, 333 Md. 516, 523, 636 A.2d 228 (1994). If the language is plain and free from ambiguity and expresses a definite and sensible meaning, we will, ordinarily, end our inquiry. *Id.* We are not, however, rigidly bound to the precepts of the “plain meaning” rule. *Department of Gen. Servs. v. Harman’s Assocs. Ltd. Partnership*, 98 Md. App. 535, 545, 633 A.2d 939 (1993). Where the General Assembly has chosen not to define a term used in a statute, we will give that term its ordinary and natural meaning and will not resort to the subtle or forced interpretations for the purpose of extending or limiting the operation of the statute. *Brown v. State*, 285 Md. 469, 474, 403 A.2d 788 (1979). Furthermore, we examine the entire statutory scheme and consider the purpose behind the particular statute before us. *Department of Public Safety v. Howard*, 339 Md. 357, 369, 663 A.2d 74 (1995). Cognizant that the language of the statute is the foundation from which our inquiry commences, we also review legislative history

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and the prior state of law, and contemplate the particular evil, abuse, or defect that the General Assembly wished to remedy with the enactment of the statute at issue. *Lemley v. Lemley*, 102 Md. App. 266, 290, 649 A.2d 1119 (1994). Moreover, the examination of related statutes is not beyond our reach. *GEICO v. Insurance Comm'r*, 332 Md. 124, 132, 630 A.2d 713 (1993).

To ascertain the legislative intent, the Court examines "the language of the enactment and gives that language its natural and ordinary meaning." *Montgomery County v. Buckman*, 333 Md. 516, 523, 636 A.2d 448, 452 (1994). Where no ambiguity exists, no further review is needed. And where a specific definition does not appear in the statute, the court will apply the ordinary and natural meaning of the word. *Brown v. State*, 285 Md. 469, 474, 403 A.2d 788, 791 (1979). In applying statutory construction principles, the appellate court may refer to dictionary definitions and common usage. *Id.* See also *Benson v. State*, 389 Md. 615, 634-635, 887 A.2d 525, 536 (2005); *Board of License Commissioners for Prince George's County v. Global Express*, 168 Md. App. 339, 348, 896 A.2d 432, 437 (2006). Often the entire statutory scheme becomes relevant to consider the purpose behind the statute. *Comptroller v. Phillips*, 384 Md. 583, 591, (2005).

In this case both the State and the County have enacted laws relating to the same topic—reimbursement of funds to municipalities for duplication of services. When interpreting similar statutes adopted by State and local governments it is important to consider whether a conflict between the two laws exists and, if so, the effect of that conflict. The Maryland Courts have recognized the concurrent power of the State and a political subdivision to enact laws regulating the same topic, providing there is no irreconcilable conflict between the two and the State has not chosen to preempt the entire field. *Baltimore v. Strick*, 254 Md. 303 (1969). Generally, a local law is "preempted by conflict when it prohibits an activity which is intended to be permitted by State law, or permits an activity which is intended to be prohibited by State law." *Coalition for Open Doors v. Annapolis Lodge No. 622 Benevolent and Protective Orders of Elks*, 333 Md. 359 (1964).

When the State legislature passes a law, it is presumed to have knowledge of its prior enactments, *State v. Briker*, 321 Md. 86 (1990), as well as all other relevant enactments, *Cicoria v. State*, 332 Md. 2 (1993), and to have knowledge of appellate Court interpretations. *State v. Sowell*, 353 Md. 719 (1999).

Principles of statutory construction also require that when construing statutes that relate to the same topic "those statutes must be read together, interpreted with reference to one another, and harmonized, to the extent possible, both with each other and with other provisions of the statutory scheme; neither statute should be read to render the other, or any portion of it, meaningless, surplusage, superfluous, or nugatory." *Geico v. Insurance Commissioner*, 332 Md.

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124 (1993). In the event there is a conflict and the conflict cannot be harmonized or reconciled, the superior authority, in this case the State law, will prevail. *City of Baltimore v. Simick, supra.*

Discussion

A. To qualify for tax duplication payments under County Law, the service must not actually be provided by the County in the municipality.

Section 30A-2 of the Montgomery County Code lists four conditions that must be met to qualify for tax duplication payments:

1. The municipality provides the services to its residents and taxpayers;
2. The service would be provided by the County if it were not provided by the municipality;
3. The service is not actually provided by the County within the municipality; and
4. The comparable County services funded from tax revenues derived partially from taxpayers in the participating municipality.

Condition 3 requires that the service provided by the municipality is "not actually provided by the County within the municipality." Section 30A-2, Montgomery County Code. The word "actually" is not otherwise defined in this Section or elsewhere in the Code, so the ordinary and natural meaning of the word will be applied. The word "actually" is defined in Webster's New Collegiate Dictionary, 150th Anniversary Edition, 1981 as "in act and in fact, really, at the present moment, in point of fact, in truth." (p.12) The ordinary and natural meaning of the word "actually" in the context of Section 30A-2(3), plainly and clearly states that in order to qualify for reimbursement, the County does not really or in point of fact provide the services. As described above, the County does in point of fact and actually provide police services in both Rockville and Gaithersburg. This interpretation is supported by the plain language of Section 30A-2(2) as well, which states the service "would be provided by the County if it were not provided by the municipality," again suggesting that only under those circumstances where the County does not provide the service is the County required to reimburse the municipality. The plain language of this section and the natural and ordinary meaning of the word "actually" clearly indicate that, if the County is providing police services within the municipality, then the County is not required to reimburse the municipality.

B. To qualify for a tax setoff under TP§6-305, the municipality must perform services and programs in place of similar services and programs performed by the County.

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In order to qualify for a tax setoff or payment to a municipality, TP§6-305(c) requires a municipality to demonstrate that the municipality "performs services or programs instead of similar County services or programs." The words "instead" or "instead of" are not otherwise defined in this section or elsewhere in the Code, so the ordinary and natural meaning of the words will be applied. The word "instead" is defined as "1. as a substitute or equivalent; 2. as an alternative to something expressed or implied." And the phrase "instead of" is also defined as "a substitute for or alternative to." Webster's New Collegiate Dictionary, 150th Anniversary Edition, 1981. (p. 593)

The ordinary and natural definition of these words in the context of the statute states that, unless the municipal service or programs are in place of or a substitute for similar County services or programs, the municipality does not qualify for a tax setoff or other payment. In this case, because the County continues to provide a variety of police services within these municipalities, the County is not required to provide a tax setoff. The plain language of the section, together with the ordinary and natural definitions of the words, limits the payment by the County to only those situations where no County services are provided within the municipality. Because the language is not ambiguous, further review or analysis is not required.

C. The State law and County law concerning tax duplication payments are not in conflict regarding the requirement to make payment.

After review of the requirement of the County law that the County not "actually" provides service and the requirement of State law that the municipality provide the service "instead of" the County, it is my opinion that these provisions are similar and harmonious with each other and do not present a conflict that requires one to have priority over the other. Both requirements plainly state that the reimbursement or tax setoff is only required if the County does not provide the service within the municipalities. The facts indicate that the County is providing police services to Gaithersburg, Rockville and Chevy Chase Village.

Conclusion

Consistent with the statutory construction principles that require the State and County laws to be read in harmony whenever possible, both of these laws require that the reimbursement or tax setoff is appropriate only where the County does not provide any police services within the municipality. The facts indicate that the County provides police services to all three of these municipalities. Therefore, under both the County law and the State law, the County is not legally obligated to reimburse the municipalities for those police services.

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Montgomery County Code

Chapter 30A. Montgomery County Municipal Revenue Program. [Note]

§ 30A-1. Established.

§ 30A-2. Qualification of municipal public services for county reimbursement.

§ 30A-3. Determination of amount of reimbursement.

§ 30A-4. Limitations on expenditures.

§ 30A-5. Application to participate in program.

§ 30A-6. County tax rate in certain municipalities.

Sec. 30A-1. Established.

There is hereby established a program to reimburse municipalities within the county for those public services provided by the municipalities which would otherwise be provided by the county government. (1974 L.M.C., ch. 7, § 1.)

Editor's note—See County Attorney Opinion dated 8/30/02 comparing State property tax duplication law and County municipal revenue sharing laws.

Sec. 30A-2. Qualification of municipal public services for county reimbursement.

Municipal public services shall qualify for county reimbursement if the following conditions are met: (1) The municipality provides the service to its residents and taxpayers, (2) the service would be provided by the county if it were not provided by the municipality, (3) the service is not actually provided by the county within the municipality and (4) the comparable county service is funded from tax revenues derived partially from taxpayers in the participating municipality. (1974 L.M.C., ch. 7, § 1.)

Sec. 30A-3. Determination of amount of reimbursement.

Subject to the provisions of section 30A-4, each participating municipality shall be reimbursed by an amount determined by the county executive to approximate the amount of municipal tax revenues required to fund the eligible services. The amount of reimbursement shall be limited to the amount the county executive estimates the county would expend if it were providing the services. (1974 L.M.C., ch. 7, § 1.)

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Sec. 30A-4. Limitations on expenditures.

All expenditures by the county under the authority of this chapter shall be subject to the limits of the funds appropriated by the county council. (1974 L.M.C., ch. 7, § 1.)

Sec. 30A-5. Application to participate in program.

Any municipality within the county which desires to participate in the county municipal revenue program shall submit not later than November 15 of each year to the county an application which shall be in such form and contain such information as may be required by the county executive. (1974 L.M.C., ch. 7, § 1.)

Sec. 30A-6. County tax rate in certain municipalities.

(a) *Reduced tax rate.* Pursuant to section 6-305 of the Tax-Property Article, Annotated Code of Maryland, before June 30 the county council may set for the coming taxable year a general county property tax rate on assessments of properties in any municipality at a rate that is less than the general county tax rate on assessments of properties in parts of the county outside of the municipality if the municipality:

- (1) Lies partly in Montgomery County and partly in another county;
- (2) Performs fire and rescue services in whole or in part in lieu of the county performing those services; and
- (3) The conditions in subsection (d) are met.

(b) *Performance of services.* The municipality may perform fire and rescue services by actually providing the services or by paying for all or part of the costs and expenses of fire and rescue services.

(c) *Amount of tax rate.* The general County property tax rate on assessments of properties in the municipality must be less than the general County property tax rate on assessments outside of the municipality by the amount of the tax rate established for the Fire Tax District for the same taxable year.

(d) *Conditions for reduced rate.* The municipality, on or before June 15, must present satisfactory written evidence to the County Council demonstrating that the municipality for the coming taxable year:

- (1) Has levied a general municipal property tax on all assessments of properties in the municipality equal to the tax rate proposed to be set for the Fire Tax District for the coming taxable year; and
- (2) Will collect and remit to Montgomery County the full amount of taxes imposed on assessments of properties in the municipality under paragraph (d)(1) in partial payment of the costs and expenses of providing fire and rescue services in the municipality.

(e) *Allocation of funds.* Taxes received from the municipality must be allocated by the County as

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follows:

- (1) Taxes on assessments of properties in the Montgomery County section of the municipality will be placed in the General Fund.
- (2) Taxes on assessments of properties in the other county's section of the municipality will be placed in the Fire Tax District Fund. (1986 L.M.C., ch. 59, § 1; 1992 L.M.C., ch. 8, § 1.)

Editor's note-1992 L.M.C., ch. 8, amending § 30A-6, became effective July 1, 1993.

Notes

[Note] ***Cross reference**-Urban renewal grants or loans to municipalities, § 56-21 et seq.

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