

MEMORANDUM

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Expedited Bill 41-09, Taxation - Property Tax Credit – Business Incubator

Expedited Bill 41-09, Taxation - Property Tax Credit – Business Incubator, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on November 17, 2009. A public hearing is tentatively scheduled for January 12 at 1:30 p.m.

Bill 41-09 would allow a property tax credit against County property taxes imposed on property that is used as a business incubator. For background and cost estimates, see the Legislative Request Report on ©4-5.

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Expedited Bill No. 41-09
Concerning: Taxation - Property Tax
Credit - Business Incubator
Revised: 6-19-09 Draft No. 2
Introduced: November 9, 2009
Expires: May 9, 2011
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 create a property tax credit for property used as a publicly sponsored business incubator.

By adding:

Montgomery County Code
Chapter 52, Taxation
Section 52-18S

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 52-18S is added as follows:**

2 **52-18S. Property Tax Credit –publicly sponsored business incubator.**

3 (a.) In this section “business incubator” has the meaning in the State law
 4 which authorizes this property tax credit.

5 (b) The Director of Finance must allow a tax credit, as authorized by State
 6 law, to a taxpayer against all County property tax and special area tax
 7 imposed on property that is used as a business incubator if the State, the
 8 County, a municipality, an organization that is exempt from taxation
 9 under §501(c)(3) of the Internal Revenue Code, a public institution of
 10 higher education, or an agency or instrumentality of the State:

11 (1) owns, controls, or leases the space that is used as a business
 12 incubator;

13 (2) provides at least 50% of the total funding received by the
 14 business incubator from all sources, not including rents received
 15 from incubator tenant firms; or

16 (3) is represented on the governance board that approves the annual
 17 budget of the business incubator.

18 (c) The tax credit under this Section must continue as long as the property
 19 meets one or more criteria listed in subsection (b).

20 (d) The Department of Finance must administer this credit.

21 (e) The taxpayer must apply for the tax credit by the first day of March
 22 before the tax year when the tax credit would be allowed. An
 23 application must be filed on forms that the Department prescribes. The
 24 applicant must submit any supporting document, information, or
 25 certification required by the Department.

26 (f) Any taxpayer aggrieved by a decision of the Director to grant or deny a
 27 credit under this Section may appeal that decision to the Maryland Tax

28 Court. Each appeal must be filed within 30 days after the taxpayer
29 receives written notice of the decision from the Director.

30 (g) The County Executive may adopt regulations under method (2) to
31 administer this Section.

32 (h) The County Executive must report annually to the County Council on
33 the use of this tax credit.

34 (i) (1) A person must not knowingly file a false or fraudulent
35 application to obtain a tax credit under this Section. A violation
36 of this subsection is a class A violation.

37 (2) In addition to the penalties provided under paragraph (1), a
38 person who violates this subsection must pay the County any
39 taxes, together with interest and penalties, offset by the credit,
40 any other penalty due, and the County's fees and costs in any
41 action to enforce this subsection.

42 **Sec. 2. Expedited Effective Date.**

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

45 *Approved:*

46 _____
47 Philip M. Andrews, President, County Council Date

48 *Approved:*

49 _____
50 Isiah Leggett, County Executive Date

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

52 _____
53 Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 41-09

Property Tax Credit –business incubator

Description: To provide a property tax credit as authorized by State law, to a taxpayer against all County property tax and special area tax imposed on property that is used as a business incubator if the County:

- (1) Owns, controls, or leases the space that is used as a business incubator;
- (2) Provides at least 50 percent of the total funding received by the business incubator from all sources, not including rents received from incubator tenant firms; or
- (3) Is represented on the governance board that authorizes the annual budget of the business incubator.

Problem: In 2005, the State Attorney General's Office determined that, based on its interpretation of the tax code, government property leased to an incubator business is taxable to the business owner, because the tenants of these publicly-operated business incubators are for-profit businesses.

Based on the State Attorney General's reading of the Maryland tax code, the State Department of Assessments and Taxation (SDAT) can therefore levy property taxes on all five of Montgomery County's existing business incubators. To date, two of the County's incubators have been assessed by SDAT: the Rockville Innovation Center (on which the Maryland Economic Development Corporation holds the mortgage); and the Wheaton Incubation Center, which is located in commercially leased space. In the latter case, property taxes are incorporated into the County's triple-net lease with the landlord, Westfields. The combined total of these two property tax bills for 2008 was approximately \$87,000. Should SDAT exercise its right to assess the County's three other incubators (the Maryland Technology Development Center, the Silver Spring Innovation Center and the Germantown Innovation Center) the estimated County tax bill would be \$231,000.

If the County's business incubators are obliged to pay property taxes, the funds will have to come either from a reduction programs and services or an increase in tenant fees. Either option undermines the incubators' public purpose, which is to foster the growth of small businesses and create new, high-paying jobs in the County.

Goals & Objectives: In the 2007 General Assembly legislative session, the Department of Economic Development worked with the Maryland Business Incubation Association to secure passage of enabling legislation to exempt publicly-sponsored incubators from State and local property taxes. Maryland Code,

Tax-Property Article, §9-247 authorizes local jurisdictions to grant a property tax *credit* against county or municipal property taxes for publicly-supported business incubators.

The purpose of this bill is to enact this legislation at the County level. This will enable the County's business incubators to dedicate all of their limited resources to supporting their core mission: fostering the development of small, innovative businesses that create new, well-paying jobs in the County.

- Coordination:** Department of Economic Development, Department of Finance
- Fiscal Impact:** Reduction in local property tax revenues of \$87,000 (based on the local share of the 2008 property tax bills for the Rockville and Wheaton Incubation Centers). The return on investment of using this money instead to enhance programming and services for the County's incubators (through new job creation and related tax revenues) is substantially greater than the reduction in County property tax revenue.
- Economic Impact:** This legislation will allow the County's business incubators to devote more resources to their core mission of fostering the growth of promising start-up businesses. These businesses create new, well-paying jobs and increase the County's tax base. To date, the County's incubator program has created over 1,500 jobs with an average annual salary of \$60,000. Incubator graduates occupy over 600,000 sf of commercial space in the County, and contribute approximately \$4 million per year in tax revenues.
- Experience Elsewhere:** A number of other Maryland jurisdictions that have indicated their intent to enact legislation that mirrors the state enabling legislation. However, to DED's knowledge, none have done so to date.
- Source of Information:** Corinne Rothblum, Business Development Specialist, Department of Economic Development, 240-777-2011; corinne.rothblum@montgomerycountymd.gov

Bill



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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

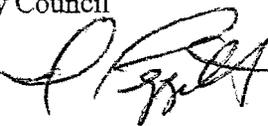
MEMORANDUM

September 24, 2009

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RECEIVED
MONTGOMERY COUNTY
COUNCIL

Isiah Leggett
County Executive

TO: Phil Andrews, President, County Council
FROM: Isiah Leggett, County Executive 
SUBJECT: Creation of a Property Tax Credit for Property Used as a Publicly Sponsored Business Incubator (County Code Section 52-18S)

I am transmitting to the Council a proposed bill to allow a tax credit against all County property and special area taxes imposed on property used as a County supported business incubator.

In 2005, the State Attorney General's Office determined that based on its interpretation of the tax code, government property leased to an incubator business is taxable to the business owner, because the tenants of these publicly-operated business incubators are for-profit businesses. Based on the State Attorney General's reading of the tax code, the State Department of Assessments and Taxation (SDAT) can, therefore, levy property taxes on all of the business incubators in the County's Business Incubator Network - including those that are owned by the County or a State entity.

To date, two of the County's incubators have been assessed by SDAT: the Rockville Innovation Center (on which the Maryland Economic Development Corporation (MEDCO) holds the mortgage); and the Wheaton Innovation Center, which is located in commercially leased space. In the latter case, property taxes are incorporated into the County's triple-net lease with the landlord, Westfields. The combined total of these two property tax bills for 2008 was approximately \$87,000. Should SDAT exercise its right to assess the County's three other incubators (the Maryland Technology Development Center in Rockville, the Silver Spring Innovation Center and the Germantown Innovation Center), the total County tax bill would be an additional estimated \$231,000, for a total annual County tax bill of \$318,000 for all five incubators.

These tax payments will have to come out of the Business Innovation Network's (BIN) operating budget, which presently does not include funds for this purpose. BIN revenues are insufficient to fully fund program and facility costs, and require annual operating grants from the County. If the County is obligated to pay local property taxes it will need to reduce BIN programs and services, increase tenant fees and/or seek additional funding support from the County. All of these options undermine the incubators' essential public purpose, which is to foster the growth of small businesses and create new, high-paying jobs in Montgomery County¹.

¹ Since the Business Incubator Network was established within the Department of Economic Development (DED) in 1999, incubator companies have created over 1,500 jobs with an average annual salary of \$60,000, and incubator graduates have leased over 600,000 square feet of commercial real estate in the County.

Phil Andrews
September 24, 2009
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To address this problem, the Department of Economic Development coordinated the Maryland Business Incubation Association's effort during the 2007 legislative session to secure passage of enabling legislation to exempt publicly-sponsored incubators from State and local property taxes. An amended version of the bill passed (Maryland Code, Tax-Property Article, §9-247) giving local jurisdictions the right to grant a property tax *credit* against county or municipal property taxes for publicly-supported business incubators (as defined in the State tax code).

The purpose of the attached bill is to enact this legislation at the County level. This will enable the County's business incubators to dedicate all of their limited resources to supporting their core mission: supporting the development of small, innovative businesses that create new, well-paying jobs in Montgomery County.

For more information on this proposed legislation, please contact John Korpela, Manager of the Business Incubator Network in the Department of Economic Development at 240-453-6348.

Attachments: Proposed legislation
Legislative Request Report
Fiscal and Economic Impact Statement
Maryland Code, Tax-Property Article, §9-247

cc: Jennifer Barrett, Director, Department of Finance
Justina Ferber, Legislative Analyst, County Council
Steve Silverman, Director, Department of Economic Development