

MEMORANDUM

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Public Hearing:** 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, was introduced on November 17, 2009. A Management and Fiscal Policy Committee worksession is tentatively scheduled for January 25 at 2 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.

After Bill 41-09 was introduced, the County Attorney's Office informed Council staff (see memo, ©8) that the introduced bill was an incorrect draft that the Executive's office had sent to us. For the Executive branch's corrected draft, see ©9-10.

<u>This packet contains</u>	<u>Circle</u>
Expedited Bill 41-09	1
Legislative Request Report	4
County Executive Memo	6
Memo from County Attorney	8
Corrected draft	9

Expedited Bill No. 41-09
Concerning: Taxation - Property Tax
Credit - Business Incubator
Revised: 6-19-09 Draft No. 2
Introduced: November 17, 2009
Expires: May 17, 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

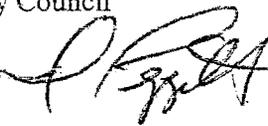
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MONTGOMERY COUNTY
COUNCIL

Isiah Leggett
County Executive

MEMORANDUM

September 24, 2009

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
Page 2

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



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Leon Rodriguez
County Attorney

MEMORANDUM

To: Kathleen Boucher
Assistant Chief Administrative Officer

FROM: John J. Fisher
Associate County Attorney

DATE: December 3, 2009

RE: Bill 41-09 – Business Incubator Tax Credit – Requested Amendments

2009 DEC 3 PM 12:51

Per our discussions, and my discussions with Peter Bang of DED, it appears that the wrong form/version of Bill 41-09 (the “Bill”) was forwarded to Mike Faden at the County Council. The Bill has already been introduced by Council. It is therefore necessary to request amendments to the pending Bill to conform it with the version of the Bill which was intended to have been conveyed by the Executive’s office to Council. Mike Faden has asked that we provide those amendments in the form of a redline to the Bill. That redline is attached.

For your and Mike Faden’s understanding, the purpose of those changes are as follows:

1. Section 52-18S(b) – this change deletes the reference to any business incubators other than those involving the State or County. After discussions with DED, and in light of the current economic climate, it was their position with which our office concurs, that the Bill should be limited in the tax credits given, particularly with respect to 501(c)(3) entities which may include a host of unintended activities as to which a tax credit would potentially be inappropriate.
2. Sections 52-18S(c) and (e) – were amended to provide that the tax credit be reapplied for annually rather than granting the tax credit in perpetuity.
3. Section 52-18S(f) – was amended to limit the right of appeal to the party applying for the tax credit to avoid granting a right to third-parties to challenge the Director of Finance’s decision to grant a tax credit.
4. Section 52-18S(h)(2) – is simply an editorial change.

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, or
8 the County, a municipality, an organization that is exempt from taxation
9 under §501(e)(3) of the Internal Revenue Code, a public institution of
10 higher education, or an agency or instrumentality of the State or the
11 County:

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

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

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

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

21 ~~(cd)~~ The Department of Finance must administer this credit.

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

27 ~~(ef)~~ Any taxpayer aggrieved by a decision of the Director to grant or

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28 deny~~denying~~ a credit under this Section may appeal that decision to the
29 Maryland Tax Court. Each appeal must be filed within 30 days after the
30 taxpayer receives written notice of the decision from the Director.

31 ~~(fg)~~ The County Executive may adopt regulations under method (2) to
32 administer this Section.

33 ~~(gh)~~ The County Executive must report annually to the County Council on
34 the use of this tax credit.

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

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

43 **Sec. 2. Expedited Effective Date.**

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

47 *Approved:*

48

49 Philip M. AndrewsNancy Floreen, President, County Council Date