

MEMORANDUM

September 16, 2016

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Public Hearing:** Bill 31-16, Taxation – Urban Agricultural Tax Credit - Established

Bill 31-16, Taxation – Urban Agricultural Tax Credit - Established, sponsored by Lead Sponsor Councilmember Hucker, was introduced on August 2, 2016. A Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for October 27 at 9:30 a.m.

Md. Tax-Property Code §9-253 provides that:

- (b) The Mayor and City Council of Baltimore City or the governing body of a county or of a municipal corporation may grant, by law, a tax credit against the county or municipal corporation property tax imposed on urban agricultural property.

Bill 31-16 would implement this authority by:

- (1) establishing an urban agricultural tax credit against real property tax;
- (2) defining an urban agricultural property and an urban agricultural purpose; and
- (3) establishing eligibility for an urban agricultural tax credit

Background

Bill 31-16 would define an urban agricultural property as real property that is:

- (1) at least one-half of an acre and not more than 5 acres;
- (2) located in a priority funding area, as defined in Md. State Finance and Procurement Code §5-7B-02; and
- (3) used for urban agricultural purposes.

The Bill would define an urban agricultural purpose as:

- (1) crop production activities, including the use of mulch or cover crops to ensure maximum productivity and minimize runoff and weed production;
- (2) environmental mitigation activities, including stormwater abatement and groundwater protection;
- (3) community development activities, including recreational activities, food donations, and food preparation and canning classes;
- (4) economic development activities, including employment and training opportunities, and direct sales to restaurants and institutions; and
- (5) temporary produce stands used for the sale of produce raised on the premises.

A property owner must conduct at least 2 urban agricultural purposes on the property. The term of the credit would be 5 years. The credit would equal the property tax otherwise due on the property.

The County Attorney's Office reviewed the Bill and made some suggested amendments to clarify the intent. See the County Attorney's Bill Review Memorandum at ©9-11.

This packet contains:	<u>Circle #</u>
Bill 31-16	1
Legislative Request Report	5
Md. Tax-Property Code §9-253	6
County Attorney Bill Review Memorandum	9

F:\LAW\BILLS\1631 Urban Agricultural Tax Credit\PH Memo.Docx

Bill No. 31-16
Concerning: Taxation - Urban
Agricultural Tax Credit - Established
Revised: August 15, 2016 Draft No. 3
Introduced: August 2, 2016
Expires: February 2, 2018
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Hucker and Co-Sponsor: Councilmember Elrich

AN ACT to:

- (1) establish an urban agricultural tax credit against real property tax;
- (2) define an urban agricultural property and an urban agricultural purpose;
- (3) establish eligibility for an urban agricultural tax credit; and
- (4) generally amend the law governing urban agricultural tax credits.

By adding

Montgomery County Code
Chapter 52, Taxation
Section 52-11D

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 52-11D is added as follows:**

2 **52-11D. Urban Agricultural Tax Credit.**

3 **(a) Definitions. In this Section:**

4 Urban agricultural property means real property that is:

- 5 (1) at least one-half of an acre and not more than 5 acres;
 6 (2) located in a priority funding area, as defined in Md. State Finance
 7 and Procurement Code §5-7B-02; and
 8 (3) used for urban agricultural purposes.

9 Urban agricultural purposes means:

- 10 (1) crop production activities, including the use of mulch or cover
 11 crops to ensure maximum productivity and minimize runoff and
 12 weed production;
 13 (2) environmental mitigation activities, including stormwater
 14 abatement and groundwater protection;
 15 (3) community development activities, including recreational
 16 activities, food donations, and food preparation and canning
 17 classes;
 18 (4) economic development activities, including employment and
 19 training opportunities, and direct sales to restaurants and
 20 institutions; and
 21 (5) temporary produce stands used for the sale of produce raised on
 22 the premises.

23 **(b) Credit required.** The Director of Finance must allow each eligible
 24 taxpayer a credit against County real property taxes due in each tax year
 25 in which the taxpayer is eligible for the credit.

26 **(c) Eligibility.** An eligible taxpayer must conduct at least 2 urban agricultural
 27 purposes on urban agricultural property. The property must be used

28 solely for urban agricultural purposes, except an individual engaged in
29 crop production on the property may also reside on the property.

30 (d) Amount of credit. The credit must equal the property tax otherwise due
31 on the property.

32 (e) Application. A property owner must apply for the credit at least 90 days
33 before the beginning of the first year the tax credit is sought on a form
34 containing the information required by the Director. A property owner
35 must apply to continue the credit at least 90 days before the beginning of
36 each subsequent tax year.

37 (f) Term of credit.

38 (1) The term of the credit is 5 years, unless renewed.

39 (2) A taxpayer may apply to renew the credit no later than 90 days
40 before the expiration of the credit for another 5 tax years.

41 (g) Continuous agricultural use required. If, at any time during the term of
42 the credit or the renewal of the credit, the property is no longer used for
43 agricultural purposes:

44 (1) the credit granted to the property must be terminated; and

45 (2) the owner of the property is liable for all property taxes that would
46 have been due during that 5-year term if the credit had not been
47 granted.

48 (h) The Director must take all actions necessary to apply the credit to each
49 eligible taxpayer who applies for the credit. A taxpayer may appeal a
50 final decision by the Director denying or terminating the credit to the
51 Maryland Tax Court within 30 days after receiving a notice of denial or
52 termination from the Director.

53 **Sec. 2. Evaluation.** The Director must submit a report to the Executive and the
54 Council on or before January 1, 2020 evaluating the effectiveness of the tax credit in
55 promoting urban agricultural purposes.

56

57 *Approved:*

58

Nancy Floreen, President, County Council

Date

59 *Approved:*

60

Isiah Leggett, County Executive

Date

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

62

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 31-16

Taxation – Urban Agricultural Tax Credit - Established

DESCRIPTION: Bill 31-16 would establish an urban agricultural tax credit against real property tax.

PROBLEM: Using property for urban agricultural purposes is becoming less common in the County.

GOALS AND OBJECTIVES: Encourage urban agricultural purposes in the County.

COORDINATION: Finance, County Attorney

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: None.

West's Annotated Code of Maryland

Tax-Property

Title 9. Property Tax Credits and Property Tax Relief

Subtitle 2. Statewide Optional

MD Code, Tax - Property, § 9-253

§ 9-253. Urban agricultural property; tax credits

Effective: June 1, 2014

Currentness

(a)(1) In this section the following words have the meanings indicated.

(2) "Urban agricultural property" means real property that is:

(i) at least one-eighth of an acre and not more than 5 acres;

(ii) located in a priority funding area, as defined in § 5-7B-02 of the State Finance and Procurement Article; and

(iii) used for urban agricultural purposes.

(3) "Urban agricultural purposes" means:

(i) crop production activities, including the use of mulch or cover crops to ensure maximum productivity and minimize runoff and weed production;

(ii) environmental mitigation activities, including stormwater abatement and groundwater protection;

(iii) community development activities, including recreational activities, food donations, and food preparation and canning classes;

(iv) economic development activities, including employment and training opportunities, and direct sales to restaurants and institutions; and

(v) temporary produce stands used for the sale of produce raised on the premises.

(b) The Mayor and City Council of Baltimore City or the governing body of a county or of a municipal corporation may grant, by law, a tax credit against the county or municipal corporation property tax imposed on urban agricultural property.

(c)(1) Except as provided in paragraph (2) of this subsection, a tax credit under this section shall be granted for 5 years.

(2)(i) If the Mayor and City Council of Baltimore City or the governing body of a county or of a municipal corporation grants a tax credit under this section, the jurisdiction granting a tax credit shall evaluate the effectiveness of the credit after 3 years.

(ii) If the jurisdiction granting the tax credit determines that the tax credit is ineffective in promoting urban agricultural purposes, the jurisdiction granting a tax credit may terminate the tax credit.

(iii) The jurisdiction granting a tax credit under this section may extend the tax credit for an additional 5 years.

(d) The Mayor and City Council of Baltimore City or the governing body of a county or of a municipal corporation may provide, by law, for:

(1) the amount of the tax credit under this section;

(2) additional eligibility criteria for the tax credit under this section;

(3) regulations and procedures for the application and uniform processing of requests for the tax credit; and

(4) any other provision necessary to carry out the credit under this section.

(e) At any time during the period for which a property tax credit under this section is granted for urban agricultural property, if

§ 9-253. Urban agricultural property; tax credits, MD TAX PROPERTY § 9-253

the property ceases to be used for urban agricultural purposes, the owner of the property shall be liable for all property taxes that would have been imposed if a property tax credit for urban agricultural property had not been granted.

Credits

Added by Acts 2010, c. 721, § 1, eff. June 1, 2010. Amended by Acts 2013, c. 660, § 1, eff. June 1, 2013; Acts 2014, c. 390, § 1, eff. June 1, 2014.

MD Code, Tax - Property, § 9-253, MD TAX PROPERTY § 9-253

Current through all legislation from the 2016 Regular Session of the General Assembly in effect through July 1, 2016

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Alexandre A. Espinosa, Director
Department of Finance

VIA: Edward B. Lattner, Chief 
Division of Government Operations

FROM: Scott R. Foncannon, Acting Chief 
Division of Finance and Procurement

DATE: August 10, 2016

RE: Bill 31-16, Taxation – Urban Agricultural Tax Credit - Established

I have reviewed Bill 31-16, Taxation – Urban Agricultural Tax Credit – Established. This bill creates an urban agricultural real property tax credit for County real property taxes, provided the real property is used for two of the five listed urban agricultural purposes or activities. The tax credit is for five tax years with a possible renewal for an additional five years. The bill also contains language that allows the County to recapture tax for the five-year period of time, if the property is no longer used for urban agricultural purposes, or is no longer eligible for the credit during that five-year period.

The tax credit is created pursuant to an enabling State law in Section 9-253 of the Tax-Property Article, of the Annotated Code of Maryland.

I have several comments concerning the tax credit bill.

1. First, under the definitions section of urban agricultural purposes, it is difficult to determine if these purposes can be considered individually, or property must comply with all of the purposes to qualify for the credit, because between No. 4 and 5 there is an "and." I believe this word should be "or."

2. Under the credit required, line 23, it directs the Director of Finance to allow each eligible taxpayer a credit against County real property taxes due in each tax year in which the

taxpayer is eligible for the credit. The very next subsection, subsection (c), line 26, describes eligibility and states that an individual engaged in crop production may also reside on the property. It is not clear to me whether the tax credit applies to just the land or, also the improvements on the land that may be used for residential purposes.

3. Also, the bill does not define a taxpayer in a way which would limit the tax credit to just individuals that own properties or whether the tax credit is available to properties that may be owned by a corporate entity, an LLC, a partnership, or a trust. In subsection (c), line 28, the bill refers to an "individual engaged in crop production", which typically denotes a human being, not an entity.

4. The bill mentions the term of the credit is five years and can be renewed for another five years (line 39). It is not clear if ten years is the maximum term or if it can be renewed perpetually.

5. I would recommend the following amendments to Bill 31-16 to help clarify the bill and make it consistent with State law.

a. Line 9 would read as follows: Urban agricultural purposes means property that is used for.

b. Line 20 would be modified to delete the word "and" and add the word "or".

c. Section (c), beginning at line 26 would be amended as follows: Eligibility. To receive the credit an eligible taxpayer must use the property for [[conduct]] at least 2 of the urban agricultural purposes [[on urban agricultural property]] during the term of the credit. The property must be used solely for urban agricultural purposes, except an individual engaged in crop production on the property may also reside on the property.

d. Section (e), beginning at line 34 would be amended as follows: Application. In order to receive the credit a property owner must apply for the credit at least 90 days before the beginning of the first year the tax credit is sought on a form containing the information required by the Director. In order to receive the credit a property owner must apply to continue the credit at least 90 days before the beginning of each subsequent tax year.

e. Section (f) at line 41 would add the word "tax" between the number 5 and the words years.

f. Section (g), beginning at line 44 would be amended as follows: Continuous agricultural use required. If, at any time during the term of the credit or the renewal of the credit, the property is no longer eligible for the credit or used for 2 Urban

Alexandre A. Espinosa
August 11, 2016
Page 3

Agricultural Purposes.

Subject to the comments above and the proposed amendments, I am recommending in the attached edited copy of the bill, the credit is authorized by state law and this bill is within the authority of the Council and is otherwise legally sufficient.

cc: Bonnie A. Kirkland, Assistant Chief Administrative Officer
Marc P. Hansen, County Attorney
Bob Drummer, Legislative Attorney
Amanda Mihill, Legislative Attorney

SRF
16-007149- Bill review