OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

MEMORANDUM

TO: Robert Hagedoorn, Chief
Treasury Division
Department of Finance

VIA: Marc Hansen MPH
Deputy County Attorney

FROM: Scott R. Foncannon
Associate County Attorney

RE: Charter Revenue Limit

DATE: June 20, 2006

Question

You have asked this Office to give an opinion on whether, for the purpose of calculation of the charter revenue limit in Section 305 of the Montgomery County Charter, "the total revenue produced by the tax on real property in the preceding fiscal year" includes interest and penalties collected on delinquent taxes in the preceding fiscal year.

When calculating the charter revenue limit, "the total revenue produced by the tax on real property in the preceding fiscal year" should not include interest and penalties collected on delinquent taxes in the preceding fiscal year, because inclusion of interest and penalties would be inconsistent with the intent and purpose of the Section 305 real property tax limitation.

Facts and History

In 1990 the Montgomery County Council adopted a resolution proposing an amendment to Section 305 of the Montgomery County Charter. The Council's amendment was one of three proposals to amend Section 305 of the Charter appearing on the ballot in the 1990 general election. The Council's amendment to Section 305 added two limitations to the Council's spending and taxing authority. The first proposed limitation stated that the County Council must annually adopt spending affordability guidelines for the capital and aggregate operating budgets and, the second proposed limitation limited the authority of the County

Council to increase the total revenue that could be produced by the ad valorem tax on real property to the total revenue produced by the tax in the preceding fiscal year plus the percentage increase of the Consumer Price Index. Both limitations could be exceeded by an affirmative vote of seven Councilmembers. The Council's proposed amendment passed and is now part of Section 305.

The limitation on revenue, found in the last paragraph of Section 305, is the topic of this opinion and states as follows:

> By June 30 each year, the Council shall make tax levies deemed necessary to finance the budgets. Unless approved by an affirmative vote of seven Councilmembers, the Council shall not levy an ad valorem tax on real property to finance the budgets *that will produce total revenue that exceeds the total revenue produced by the tax on real property in the preceding fiscal year* plus a percentage of the previous year's real property tax revenues that equals any increase in the Consumer Price Index as computed under this section. This limit does not apply to revenue from: (1) newly constructed property, (2) newly rezoned property, (3) property that, because of a change in state law, is assessed differently than it was assessed in the previous tax year, (4) property that has undergone a change in use, and (5) any development district tax used to fund capital improvement projects.(Emphasis added)

The intent of this amendment was to control tax increases by making it more difficult for the County Council to increase real property tax revenue above the annual average increase of the Consumer Price Index.(Charter Revenue Limit) The first sentence of Section 305 imposes an affirmative obligation on the Council to make tax levies necessary to finance the budgets. This sentence existed in Section 305 prior to the general election in 1990, and the remainder of the paragraph was added by the amendment in 1990.

Annually the Treasury Division of the Department of Finance prepares revenue estimates and calculates the Charter Revenue Limit for the County Council so the Council knows what tax levy is permitted to finance the budgets without the necessity of obtaining the approval of seven councilmembers.

There are two components to the calculation of the Charter Revenue Limit. The calculation starts with multiplying the assessable base of all taxable real property in the County for the current year by the current ad valorem tax rate. This calculation produces the gross tax revenue and from the gross tax revenue all State and County tax credits are deducted to arrive at the total revenue produced by the tax in the preceding year (the base amount). The base amount is multiplied by the Consumer Price Index and the product of this calculation is added to the base amount and the sum equals the Charter Revenue Limit. The Treasury Division has used this method of calculation of the Charter Revenue Limit since the amendment to Section 305 was adopted and the Charter Revenue Limit was imposed.

Recently Council staff has suggested that the Charter Revenue Limit should include the interest and penalties collected on delinquent taxes from the preceding fiscal year as part of the total Charter Revenue Limit. The question was presented to this Office for an opinion on whether interest and penalties from the preceding fiscal year should be included as part of the Charter Revenue Limit calculation. The effect of adopting this change in the way the Charter Revenue Limit is calculated would be to increase the amount of tax the Council could impose without obtaining the approval of seven councilmembers.

Discussion

In order to resolve this issue the phrase "the total revenue produced by the tax on real property in the preceding fiscal year", must be interpreted to determine what the County Council intended by this language. The process of interpretation of legislation, including a Charter provision always begins with analysis of the language or text of the statute. *Sweeny v. Sov. First Mortgage, LLC.*, 388 Md. 319, 326, 878 A.2d 1032, 1041, 2005; *Mayor and City Council of Baltimore v. Baltimore City Firefighters local 734, I.A.F.F., et al*, 136 Md. App. 512, 766 A.2d 219 (2001). If the language of the statute is clear and unambiguous the inquiry may end and the plain meaning of the statute will govern. *City Council of Baltimore, supra*. But the plain-meaning rule is not cast in stone and the Court may look to legislative history for a more complete understanding of the legislative intent. *Mayor and City Council of Baltimore, supra.* The goal of interpretation is to determine the legislative purpose, the ends to be accomplished and the particular problem or problems the legislature was addressing, and the objective it sought to attain. *Davis v. Slater*, 383 Md. 599, 604-205, 861 A.2d. 78, 81 (2004), *Mayor and City Council of Baltimore, supra*. When analyzing a statute, the Court will seek to avoid constructions that are illogical, unreasonable or inconsistent with common sense. *Frost v. State* 336 Md. 125, 547 A2d 106 (1994), *Mayor and City Council of Baltimore, supra*.

Since adoption of the Charter Revenue Limit in 1990 the Department of Finance has not included interest and penalties in calculating the real property tax revenue for the preceeding fiscal year. The Council has acquiesced in the Departments implementation of the Charter Revenue Limit. A long-standing interpretation of a law by the agency administrating the law coupled with legislative acquiescence in that interpretation creates a strong presumption that the interpretation is correct. *Hospital v. Dept. of Employment, 309 Md. 28, 46, 522A.2d 382, 391 (1987).*

Moreover, the Department's interpretation is consistent with the ordinary meaning of the language of Section 305. Interest and penalties, although classified and accounted for as revenue, is not revenue produced by the tax. Interest and penalties are imposed on a taxpayer who pays the tax after the due date. Interest and penalties are not reliable sources of revenue and many times during the collection process or prior to tax sale, penalties and, in limited circumstances interest, are fully or partially waived to facilitate collection. Interest and penalties are not only speculative and unanticipated but is not revenue produced as a result of the imposition of a tax rate.

Most importantly, the Department's interpretation advances the purpose of the Charter Revenue Limit. The purpose of the Charter Revenue Limit is to control and limit the tax bill for the average taxpayer who pays on time. This ensures to the County taxpayer that, absent an override by seven members of the Council, tax bills will not increase more than the rate of inflation. When this provision is reviewed in the context of this purpose and intent, it is clear that the proper construction of this section requires the County to limit revenue created by the tax, not to expand revenue to include other sources of revenue that are not produced by the tax such as interest and penalties. This interpretation is consistent with the particular problem the legislature was attempting to address and the objective it sought to attain-limiting the burden of the real property tax to the rate of inflation unless a super majority of the Council determined there was a public purpose that justified such an increase

cc. Timothy Firestine
Steve Farber

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