

Action

MEMORANDUM

May 18, 2010

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney
Amanda Mihill, Legislative Analyst, *AMihill*

SUBJECT: **Action:** Resolution to amend rates of Telephone Tax

Management and Fiscal Policy Committee recommendation: adopt resolution as proposed by the Executive.

A resolution to change the rates of the telephone tax, sponsored by the Council President at the request of the County Executive, was introduced on April 27, 2010. A public hearing was held on May 18 and a Management and Fiscal Policy Committee worksession was held on May 6.

This resolution would increase the rate for wireless telephone lines to \$3.00 per month per line. The Executive estimates that this increase would produce \$11.853 million more revenue in FY11.

History of the Telephone Tax

The County first imposed a telephone tax in 1971. This preceded the breakup of AT&T. At the time, phone charges in the County were based on message units and "base unit" telephones. From 1971 to 1984, the tax was assessed as a percentage of message units sold to a customer plus a set amount per "base unit." When AT&T broke up, the local billing method changed and made the County's method of assessing the telephone tax obsolete. Nevertheless, from 1984 to 1989, the local exchange provider continued to pay the County an amount of tax equal to the amount it had been paying under the old local billing method.

In 1988, the Council passed legislation changing the telephone tax assessment to a per-line rate calculated to produce the same amount of revenue that the County had collected under the old assessment method. The law took effect in early 1989 and set the rate at \$0.62 a month for each non-Centrex line and \$0.062 a month for each Centrex line. The law ratified the

tax collections that the County had received from the local exchange carrier between 1984 and 1989 by making the law retroactive to 1984.

In 1991, the Council adopted Resolution 12-193 to approximately double the telephone tax from \$0.62 to \$1.25 a month on each residence, business, or PBX local exchange access line or trunk line, and from \$0.062 to \$0.125 a month on each Centrex local exchange access line or trunk line. The resolution provided that the rates would return to \$0.62 and \$0.062, respectively, on July 1, 1995. Before the automatic reduction took effect, the Council adopted Resolution 13-161 and set the rates at \$0.925 and \$0.092, respectively.

In 1996, the Council amended the law to apply the tax to wireless telephone service, which did not exist when the Council first imposed the telephone tax. The law set the tax on wireless service at the same rate as the tax on most wired telephone service, \$0.925 a month per line, and continued the Council's authority to change rates by resolution.

In 1999, the Council set the rate for wireless service at zero, although the statutory authority for taxing wireless service remained unchanged.

In 2003, the Council adopted Resolution 15-173 to increase the rate to \$2.00 a month on each residence, business, or PBX local exchange access line or trunk line and each wireless telephone line, and \$0.20 a month on each Centrex local exchange access line or trunk line.

Committee Recommendation

1. *Should the wireless telephone tax rate be raised? Should the landline rate be raised?* At its worksession on May 6, the Committee discussed whether members wanted to raise the tax rate for landlines. Staff in the Department of Finance estimated that if the landline rate was increased to \$3.00 per month per line, which is the same increase the Executive has proposed for wireless lines, the County would receive approximately \$3.37 million in additional revenue in FY11. The Committee recommended adopting the resolution as proposed by the Executive.

2. *Should the telephone tax increase be sunset?* Although the Committee did not discuss this issue, Councilmembers may wish to consider whether the increase should sunset after a given year.

<u>This packet contains:</u>	<u>Circle #</u>
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Resolution No.: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Council President at the Request of the County Executive

SUBJECT: Telephone Tax - Rates

Background

1. Section 52-15 of the County Code levies a tax on every person who owns a telephone line for the reception, transmission, or communication of messages by telephone, or who leases, licenses, or sells telephonic communication in the County.
2. Section 52-15 provides that the Council must set by resolution the monthly tax rate for each type of telephone line listed in Section 52-15(a)(1), after holding a public hearing advertised as required by Section 52-17(c). The Council held a public hearing on this resolution on _____.
3. Resolution 15-173, approved by the Council on May 14, 2003, sets the current telephone tax rates.

Action

The County Council for Montgomery County, Maryland amends Resolution 15-173 as follows:

Effective July 1, [2003] 2010, the rates of the telephone tax levied under Section 52-15 of the Code are:

- (1) \$2.00 a month on each residence, business, or PBX local exchange access line or trunk line (except lines furnished to telephone lifeline services customers);
- (2) [~~\$2.00~~] \$3.00 a month on each wireless telephone line; and
- (3) \$0.20 a month on each Centrex local exchange access line or trunk line.

This is a correct copy of Council action.

APPROVED AS TO FORM AND LEGALITY:
OFFICE OF COUNTY ATTORNEY
BY Maria Herrera
DATE 4/26/10

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

April 26, 2010

TO: Nancy Floreen, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Telephone Tax – Rate Increase

I am forwarding to the Council with this memorandum a proposed resolution to increase the wireless telephone tax. I am making this difficult recommendation because of the recently projected severe decline in income tax revenues for FY11.

The current rate for wireless telephone customers is \$2/line per month. I am recommending that the Council increase this rate to \$3/line per month to raise an additional \$11.853 million in FY11. I recommend that land-line rates remain the same. This increase in revenue is necessary in order to balance the FY11 budget.

IL:tjs

Testimony: Resolution to Amend the Rates of the Telephone Tax

Good afternoon, I am Joseph Beach, Director of the Office of Management and Budget, and I am here to testify on behalf of County Executive Isiah Leggett in support of the resolution to amend the rates of the Telephone Tax.

This resolution will amend the existing telephone tax rates, as recommended by the County Executive in his proposed amendments to the FY11 Operating Budget on April 22, in order to raise an additional \$11.8 million in FY11. The recommended increase would change the monthly tax on wireless lines from \$2 per line per month to \$3 per line per month. In making this recommendation, the County Executive is cognizant of the impact this tax rate increase will have on County households and businesses.

The Executive reached this decision only after making extensive expenditure reductions in the County Government and recommending other expenditure and service reductions to other County Agencies. - a reduction of 7.7% in the tax supported budget for the County Government; reducing the local contribution to Montgomery County Public Schools by \$137 million; recommending reductions of over 15% to the Maryland National Park and Planning Commission, and approximately \$15 million from Montgomery College's FY11 request. Over 460 County positions would be abolished in FY11 with over 240 of these positions being filled. Wages will be frozen for all employees and for County Government employees a 10 day or 80 hour furlough will be implemented.

In the absence of this recommended increase in the telephone tax, the reductions in every County Government department and agency and the citizens they serve would be even greater.

In addition, failure to approve the recommended resolution could impact the County's reserve which would not only affect the County's AAA bond rating, it would reduce the amount of funds available to respond to mid-year expenditure increases and revenue declines. As we

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Testimony: Resolution to Amend the Rates of the Telephone Tax

have briefed the Council before, the revenue volatility the County has experienced in the past year, especially in regard to the County's income tax, our declining reserve levels, and the overall lack of flexibility has caused Moody's to place certain bonds issued by Montgomery County on a negative watch list for a potential downgrade. Such a downgrade in the County's credit rating would increase our cost of borrowing, constrict the amount of construction we could afford in our capital program, and could impede our access to credit markets in times of reduced liquidity.

We urge the Council to approve this resolution.

May 18, 2010

Testimony of AT&T, T-Mobile, Sprint and Verizon Wireless in Opposition to the Resolution to Amend Rates of Telephone Tax

Montgomery County Council

May 18, 2010

On behalf of AT&T, T-Mobile, Sprint and Verizon Wireless, we respectfully oppose the County Executive's proposal to add an additional one dollar (\$1) charge per line per month for wireless service in Montgomery County. The underlying principle that the wireless industry seeks on behalf of its customers is tax fairness. Quite simply, the industry believes that consumers of communications services should be taxed like consumers of other goods and taxable services. The industry is not asking that its customers be exempt from paying taxes, just that customers not be targeted with excessive and discriminatory taxes. Unfortunately, in Montgomery County, wireless consumers are hit with both excessive and discriminatory taxes.

The Montgomery County budget for 2011, proposes to increase the already excessive tax on cell phone consumers from \$2 to \$3 per line per month - a whopping 22.6% municipal tax hike on all Montgomery County families and small, medium and large businesses. The tax is expected to cost wireless phone users an additional \$11.853 Million in FY2011. This proposal would make Montgomery County wireless users, currently one of the highest-taxed in the country, pay even more. New taxes on wireless services increases the cost for your constituents and thereby discourages the use of those services, including broadband services, which state, local and federal legislators are determined to universally deploy.

Wireless consumers already pay more than their fair share of taxes, paying a \$2.00 per line monthly tax, a 6% state sales tax, and additional state and local 911 taxes. **If this proposal is adopted, the state and local tax burden on the average Montgomery County wireless customer would increase from an already excessive 17% to nearly 23% of the bill.** The average Montgomery County customer would pay nearly **three times** what a Northern Virginia customer would pay!

There is no dispute that state and local taxes on communications consumers are highly regressive. Simply stated, lower income consumers, e.g., seniors on social security, pay a much higher proportion of their incomes in communications taxes than do higher income consumers. Recent studies by the Centers for Disease Control found that low-income households are hit hard by wireless taxes. For example, 27% of households in poverty have wireless service as their only telecommunications service and 59% of "wireless only" households have incomes below \$40,000 per year.

As stated above, higher taxes and fees on wireless service reduces accessibility for seniors, families, small businesses and students in this difficult economy. While it is true

that many counties and cities across Maryland are in the midst of their worst fiscal crisis in modern history, and in many cases considering cuts to public safety and other essential services, or raising property taxes, it is also true that in Montgomery County, MD, wireless customers are already paying among the highest taxes in the country. It is not fair to pile on new taxes when wireless consumers are already paying more than their fair share of city, state and local taxes. Wireless services have contributed to the business development and jobs in the County and in the State and those services should be encouraged as a way of bridging the digital divide and not taxed in a manner that curtails its growth. Utilizing wireless service cannot be considered a "sin" that must be eradicated through excessive taxation.

When many of these taxes were first imposed 50 or even 100 years ago, telephone service was considered a luxury only afforded by the rich. Today, communication services are a necessity and other state and federal policies help ensure that every American household has such services at a reasonable cost. Unfortunately, in the case of communications services in Montgomery County, consumers face layer upon layer of regressive taxes. A wireless customer buying a lower-priced plan would face a greater tax burden than a customer buying a more expensive plan. For example, the combined county and state tax burden would be almost 23% on a customer with a \$59.97 three-line family plan as compared to 11% for a \$99.99 single-line monthly plan. This proposal imposes the largest burden on those least able to afford it. **Customers purchasing a low-priced plan could face the highest tax burden in the country!**

Additionally, businesses today are increasingly incorporating wireless services and applications into their business plans. Wireless applications increase business productivity and profitability by improving transportation and logistics, integrating sales forces with home offices, providing remote access to information, and in a host of other ways. This proposed wireless telephone tax will impose additional costs on businesses located in Montgomery County, making other counties, cities, and Washington, D.C. suburbs a more attractive place to do business and hurting the County's important efforts to attract new businesses.

Just as the initial development of the Internet was the driver of productivity in the late 1990s, broad deployment of high speed advanced communications networks and applications are the drivers of productivity growth today. Tax and regulatory policies that promote investment in such communications networks and applications will generate important economic benefits. Conversely, policies that increase the cost of investment or otherwise slow investment in communications infrastructure will delay important economic benefits.

The economics of the tax increase for the representative businesses identified below breaks down as follows:

- A small business with 50 wireless lines current pays \$100 per month or \$1200 per year to the County, along with \$50 per month /\$600 per year in state/county 911 fees. Additionally, they also pay 6% of their monthly spend in sales taxes.

Assuming \$50 per month per line, the sales tax would be \$150 per month / \$1800 per year for a total tax/fee bill of \$3600 per year. **The \$1.00 increase in the county tax would increase the annual tax bill by another \$600 to \$4200 per year.**

- A medium-sized business with 200 wireless lines currently pays \$400 per month or \$4800 per year to the County, along with \$200 per month/\$2400 per year in state/county 911 fees. Additionally, they also pay 6% of their monthly spend in sales taxes. Assuming \$50 per month per line, the sales tax would be \$600 per month / \$7200 per year for a total tax/fee bill of \$14,400 per year. **The \$1.00 increase in the county tax would increase the annual tax bill by another \$2,400 to \$16,800 per year.**
- A large business with 5,000 wireless lines currently pays \$10,000 per month or \$120,000 per year to the County, along with \$5,000 per month / \$60,000 per year in 911 fees. Additionally, they also pay 6% of their monthly spend in sales taxes. Assuming \$50 per month per line, the sales tax would be \$15,000 per month / \$180,000 per year for a total tax/fee bill of \$360,000 per year. **The \$1.00 increase in the county tax would increase the annual tax bill by another \$60,000 to \$420,000 per year.**

These additional costs applied to businesses are likely to be passed on to consumers in Montgomery County.

Wireless service needs to remain affordable and accessible to ALL

In the challenging economic times we all face, now is not the time to take advantage of our dependence and daily reliance on cell phones by considering slapping Montgomery County consumers with a new \$3 per line per month telephone tax, one of the highest local wireless taxes in the nation. Montgomery County's wireless providers wish that you would be seeking to eliminate regressive taxes on all services to relieve consumers of excessive burdens, rather than expanding taxes on telecommunication service.



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May 18, 2010

**Statement of Pete Sepp, Executive Vice President
National Taxpayers Union
To the Montgomery County Council
Regarding the Fiscal Year 2011 Budget**

President Floreen and Members of the Council, I am honored to be able to present these remarks on behalf of the National Taxpayers Union's 1,500+ members in Montgomery County and our 362,000 members nationwide. We commend the Council's progress so far in crafting a budget that reflects a reality born not simply by the current economy, but by years of excessive expenditure growth. Nonetheless, we believe that further progress can and should be made. Accordingly, I urge you to reject the tax increases contained in the budget plan now before you, and work instead for additional spending restraint.

As a Silver Spring resident, I can personally attest to the apprehension many County residents and small business owners feel over the prospect of tax hikes. And while public officials are to be commended for avoiding increases in property and other taxes, the proposals currently under consideration carry numerous problems of their own.

For example, Montgomery County consumers already pay one of the highest combined tax rates for cellular phone service in the nation, including a monthly \$2.00 per line charge, a six percent state sales tax, and 911 fees. The proposed \$1 boost in the charge, which adds up to a near-\$12 million tax hike in the coming fiscal year, will make this disparity even worse. The total tax load will exceed 20 percent on an average bill, three times as heavy as a Northern Virginia consumer must carry. Moreover, because the tax is levied per line, a family that buys a plan with multiple lines will pay more than an individual who buys a single-line plan. Many families, especially low-income families, rely on wireless service as their primary means of communication.

The proposed cellular phone tax hike will also harm small business owners and workers in Montgomery County. A growing number of these Marylanders, from bakers to contractors, use cellular phone service to enhance communication with customers, complete more sales, and improve their logistical operations. If Montgomery County raises its tax on cellular phone service, the businesses that use wireless will be forced to seek out phone service that costs less or drop service altogether. Similar effects could occur if the Council adopts higher energy taxes. In these times of economic uncertainty and deficits, Montgomery County should not give businesses an incentive to spend their dollars elsewhere or not at all.

It may be true that Montgomery County offers other features that may attract economic activity, but no jurisdiction – not even one with a large base of resilient government jobs – can ask any more from its taxpayers. Tax hikes should never be the first resort to meet budget shortfalls, but in this slow economy, they are fiscally suicidal. When the public sector

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takes more, consumers and businesses have less to pay their bills and stay afloat – and less ability to contribute income and property taxes.

These competitiveness considerations are not academic – they are quantifiable. According to an analysis from the Washington, DC government’s Office of Finance and Revenue conducted in late 2009, a family of three shoulders a heavier overall tax burden in Montgomery County across all five income categories studied (ranging from a low of \$25,000 to a high of \$150,000) than in the District of Columbia. The County was in a virtual tie in most income scenarios with Prince George’s. Compared to the three northern Virginia areas of Alexandria, Arlington County, and Fairfax County, Montgomery County finished highest-taxed in every case except one (the \$25,000 level). Ironically, the new wireless taxes will hit this income group hardest, diminishing one of the few tax advantages the County may have. Among middle-class households, the difference in tax bills for Montgomery approached or exceeded \$2,000 depending upon the jurisdiction to which it is compared.

This government has many alternatives it could implement instead of further burdening the people it serves. For example, Montgomery County is spending at least \$1 million per year on a language skills bonus for county workers, even if the skills are not used. The County must redouble its efforts to find savings by reevaluating programs, improving efficiency, and cutting waste. It also means exploring concepts such as Technical Auditing for infrastructure projects and Recovery Audit Contracting for benefit and grant programs. Finally, the County must confront the inevitable adjustments that must be made in non-instructional education spending, including health benefits and other compensation.

County officials should be working to reverse, not accelerate, the economically destructive trend of boosting predatory taxes on their citizens. They can begin doing so by rejecting out of hand the tax increases on wireless service, energy, and other activities in the current budget.

At this point in the County’s fiscal history, it is tempting to “call it a day,” pass a budget with tax increases, and make other structural program changes at some other more convenient point in the future. Unfortunately, from the federal government down to the local level, that point of convenience has been passed. The nation’s largest entitlement programs are or will soon be in the red, government employee compensation, especially in retirement, is unsustainable, and capital projects face huge financing challenges. Tax increases won’t resolve these problems. We stand ready to work with you in finding solutions that will.

I appreciate the opportunity to present these views.

The County Council is considering a resolution to increase the monthly wireless telephone tax from \$2 to \$3 per line. We respectfully urge Councilmembers to consider the following information during their deliberations.

Montgomery County's current wireless tax is already 200% higher than most Maryland counties and all of Northern Virginia's jurisdictions.

- Increasing the tax to \$3 would force County residents to pay 300% more than most of their neighbors.

Wireless taxes and fees are already more than double the average rate of taxes imposed on general goods and services.

The average rate of taxes and fees imposed on wireless consumers is more than 15% while the average rate of taxes imposed upon general goods and services is less than half that amount. Consumers should not pay more in taxes to use their wireless service than they pay for other taxable goods and services.

Wireless taxes disproportionately target low income residents, many of whom rely on wireless for their only telecommunications service.

- According to the Centers for Disease Control (CDC), 27% of households in poverty have wireless service as their only telecommunications service.
- The CDC also found that 59% of "wireless only" households have incomes below \$40,000 per year.

The National Conference of State Legislatures has decried the fundamental disconnect between telecommunication public policy goals and telecommunication taxes.

In its Communications Tax Reform resolution, NCSL stated:

- State and local tax burdens on communications companies and their customers are significantly above those imposed on most other types of industries and services.*
- Taxes on communications services are regressive, applying a discriminatory tax regime to communications services, only adds to the "High Cost of Being Poor" for low income Americans.*
- Many government officials have worked to develop programs that bridge the so-called "digital divide," only to raise taxes on those very same communications services that may be three to five times higher than the general sales tax, thus punishing the people they are trying to assist.*

Monthly Wireless Taxes and Fees (based on average customer bill of \$50)						
Jurisdiction	Local Tax	State Sales Tax	911 Fee	Federal USF	Total	% of Bill in Taxes
Montgomery County (current tax)	\$2.00	\$3.00	\$1.00	\$2.74	\$8.74	17.5%
Montgomery County (\$1 increase)	\$3.00	\$3.00	\$1.00	\$2.74	\$9.74	19.5%
Montgomery County (\$2 increase)	\$4.00	\$3.00	\$1.00	\$2.74	\$10.74	21.5%
Montgomery County (\$3 increase)	\$5.00	\$3.00	\$1.00	\$2.74	\$11.74	23.5%
Fairfax County	\$0.00	\$2.50	\$0.75	\$2.74	\$5.99	12.0%
Howard County	\$0.00	\$3.00	\$1.00	\$2.74	\$6.74	13.5%
Anne Arundel County	\$0.00	\$3.00	\$1.00	\$2.74	\$6.74	13.5%
Baltimore County	\$0.00	\$3.00	\$1.00	\$2.74	\$6.74	13.5%
Alexandria	\$0.00	\$2.50	\$0.75	\$2.74	\$5.99	12.0%
Arlington	\$0.00	\$2.50	\$0.75	\$2.74	\$5.99	12.0%
Prince George's County	\$4.00	\$3.00	\$1.00	\$2.74	\$10.74	21.5%
District of Columbia	\$5.00	\$0.00	\$0.76	\$2.74	\$8.50	17.0%