

Testimony to the Montgomery County Council in regard to the 2023 budget

April 13, 2023

Louis Wilen
Resident of Olney, Maryland

Good afternoon Mr. President and members of the County Council,

I'm here to address the Council budget discussion that took place a few days ago about the \$692 ITOC. During the discussion, the issue of including the clawed-back ITOC funds in the proposed budget was raised. One concern was that including the clawed-back ITOC funds in the 2023 budget would cause fiscal distortions that would impact spending in the future.

To clarify, the county issued the \$692 credit presumptively on the 2022 tax bills with a plan to claw it back from homeowners who do not submit their Homestead Tax Credit (HTC) application by May 1, 2023. However, the statutory deadline for submitting the HTC application to qualify for the ITOC in 2022 was actually **May 1, 2022** and there is no legal basis for presumptively issuing the ITOC.

Therefore, the county should be clawing back all of the \$692 ITOCs awarded in 2022 to homeowners who had not submitted their HTC applications by **May 1, 2022**.

Former Delegate Eric Luedtke (now the governor's Chief Legislative Officer) sponsored the bill (HB1200 of 2020) that ties issuance of the ITOC to having an approved HTC form on file at SDAT. In 2022, Mr. Luedtke confirmed in writing to the county finance director that state law does not allow for presumptive issuance of the ITOC. Stanford Ward, legislative attorney to the General Assembly, also confirmed in writing in 2022 that "the county is not complying with the [state] law" by presumptively issuing the ITOC.

The relevant emails sent by Mr. Luedtke and Mr. Ward to the finance director and to state delegates are included with my written testimony.

The county attorney has reportedly claimed that another enacted bill, HB203 of 2022, allows presumptive issuance of the ITOC. Former Delegate Luedtke quashed the claim, writing that "HB203 passed through my committee," and he "entirely agrees with Mr. Wilen." Again, see the attached emails.

By following state law, the budget concerns involving the ITOC problems can be resolved and the county will recover many millions of dollars of improperly issued tax credits. Also, you could reduce the 2023 tax rate or increase the 2023 ITOC by clawing back the improperly awarded 2022 ITOCs.

Thank you for allowing me to speak.

On 7/6/2022 7:08 PM, Coveyou, Michael wrote:

Hello Mr. Wilen,

I would respectfully note that HB1200 ties the ITOC to the Homestead Credit application and HB203 does not “untie” the two so I believe a person who has a Homestead Application on file with SDAT (application made before May 1, 2023) would reasonably expect to also receive the County ITOC when retroactively granted Homestead Credits for FY23. I believe the method we are using is the most reasonable method for all concerned.

Thanks,
Mike

From: Louis Wilen <louiswilen@gmail.com>

Sent: Wednesday, July 6, 2022 2:32 PM

To: Coveyou, Michael <Michael.Coveyou@montgomerycountymd.gov>

Cc: Eric Luedtke <ericformaryland@gmail.com>; Korman, Marc Delegate <Marc.Korman@house.state.md.us>; Madaleno, Richard S. <Richard.Madaleno@montgomerycountymd.gov>; Wenger, Melanie <Melanie.Wenger@montgomerycountymd.gov>

Subject: Re: Fw: Many property tax bills possibly incorrect -- ITOC improperly applied

[EXTERNAL EMAIL]

Mr. Coveyou et. al.,

I read and understand your response immediately below. However, even if 100% of the homeowners who have not submitted a homestead credit application were to qualify for the homestead application under HB203, none of those homeowners would be entitled to receive the 9-221 credit (ITOC) for 2022, either now or in the future (unless a new law is passed in 2023).

Therefore, the only reasonable action to take would be to reissue 2022 property tax bills (without the \$692 credit) as soon as possible to homeowners who have not submitted the homestead credit application. The misleading information about the \$692 credit should also be promptly updated on the County website.

I will add that all homeowners have been notified every year in writing since the homestead credit verification act was passed of the importance of submitting the homestead credit application. There has also been extensive media coverage about the homestead credit application over the years.

Louis Wilen

On Wed, Jul 6, 2022, 9:20 AM Coveyou, Michael <Michael.Coveyou@montgomerycountymd.gov> wrote:

Hello Mr. Luedtke and Mr. Wilen,

I am confident that my plan to administer this change in the law comports with State law in that it does remove the ITOC in the event that a homeowner does not have a Homestead application at the time they will no longer be eligible for either a Homestead credit or a County ITOC. I am sure that you are aware that the vast majority of homeowners affected by HB1200 are people who have received the County ITOC legally for several, if not many, years. Therefore removing the ITOC while there is still the likelihood that they will be eligible, because HB203

requires SDAT to apply the Homestead credit retroactively, means we are disrupting the lives of far fewer taxpayers who would otherwise have no ITOC on the bill beginning FY23, but who then would be eligible for the ITOC because of the plain language of **HB203**. For those homeowners we would have to make refunds, a process which is not only unreasonable for the taxpayer who is entitled to a credit, but which is also very costly to the County, as well as being administratively inefficient. It is far less costly to both homeowners and the County to bill the homeowners who do not have a Homestead application when there is actually no longer any chance that they could be eligible for the credits. Note that our collection rate for real property taxes is over 99%, so there is little risk that ITOCs billed in May/June of 2023 will go uncollected. If you have any questions, please let me know.

Take care,
Mike Coveyou

From: Eric Luedtke <ericformaryland@gmail.com>

Sent: Tuesday, July 5, 2022 9:35 AM

To: Coveyou, Michael <Michael.Coveyou@montgomerycountymd.gov>

Cc: louiswilen@gmail.com; Korman, Marc Delegate <Marc.Korman@house.state.md.us>; Madaleno, Richard S. <Richard.Madaleno@montgomerycountymd.gov>; Wenger, Melanie <Melanie.Wenger@montgomerycountymd.gov>

Subject: Re: Fw: Many property tax bills possibly incorrect -- ITOC improperly applied

[EXTERNAL EMAIL]

Mr. Coveyou,

Typo. He obviously meant HB203. See other emails for confirmation.

With respect, I agree completely with Mr. Wilen here. HB 302, which passed through my committee, was focused on the homestead credit and the implications for the provision of the homestead credit to help keep people in Baltimore City from having their homes go to tax sale. In its plain language, it allows for the retroactive granting of homestead benefits but **does not allow for the presumptive granting of homestead benefits under the assumption that a person will qualify in a following year.** Regardless, it does not apply at all to the income tax offset credit and should not be a consideration in the implementation of Chapter 445 of the 2020 legislative session. Chapter 445 clearly barred anyone as of the tax levy year that began July 1 from qualifying for the income tax offset credit if they did not have a homestead credit application on file.

Best,

Delegate Eric Luedtke

On Tue, Jul 5, 2022 at 9:12 AM Luedtke, Eric Delegate <Eric.Luedtke@house.state.md.us> wrote:

Caroline Bauk
Legislative Aide
Delegate Eric G. Luedtke, District 14
Majority Leader, House of Delegates

From: Louis Wilen <louiswilen@gmail.com>
Sent: Friday, July 1, 2022 6:34 PM
To: Coveyou, Michael
Cc: Luedtke, Eric Delegate; Korman, Marc Delegate
Subject: Re: Many property tax bills possibly incorrect -- ITOC improperly applied

Mike,

It seems incredibly odd and is certainly not a usual practice to issue a tax credit preemptively on the basis that someone might apply for that credit the following year. In fact, I can't find any precedent in property tax administration or income tax administration for preemptively issuing a tax credit.

Furthermore, by issuing the credit preemptively, the county is extremely unlikely to be able to recapture any improperly issued 2022 credit from people who do not apply for it. Literally millions of dollars of tax revenue are at stake.

I'm trying to help the county obtain all the tax revenue that it is entitled to receive.

If there is a plan for recapturing 2022 credits that are improperly issued, please let me know.

I'm also copying Delegate Marc Korman on this email because he has expressed interest in the matter.

Louis

On Fri, Jul 1, 2022, 5:52 PM Coveyou, Michael <Michael.Coveyou@montgomerycountymd.gov> wrote:

Hello Louis,

I read and understood your email, but note that we have also read the law, discussed it internally and with the County Attorney's office and concluded that the best way to administer the law is through the method that we have laid out, which does comply with State laws. I believe our method is the least disruptive for homeowners and it is the most efficient administratively. It will also ensure that eligible homeowners continue to receive the credit and those that do not establish eligibility by the May 1, 2023 deadline will have the credit terminated and removed for this fiscal year and future fiscal years (assuming they do not become eligible for a future year, at a future time).

Have a wonderful holiday weekend. I will be in the office next week.

Mike

From: Louis Wilen <louiswilen@gmail.com>
Sent: Friday, July 1, 2022 11:33 AM
To: Coveyou, Michael <Michael.Coveyou@montgomerycountymd.gov>
Cc: Luedtke, Eric Delegate <eric.luedtke@house.state.md.us>
Subject: Re: Many property tax bills possibly incorrect -- ITOC improperly applied

[EXTERNAL EMAIL]

Mike,

Thank you for your quick reply. For the following reasons, I think that the section 9-221 credit should not be issued to properties that do not have a Homestead Credit application on file at SDAT, even after taking the provisions of HB203 into consideration.

1. HB203 certainly covers the Homestead Credit but does not mention the section 9-221 credit. HB203 mentions the "Homestead Property Tax Credit Program," but wouldn't it be quite a stretch to say that the Homestead Property Tax Credit Program includes the 9-221 credit? I think that if the legislature meant to include the section 9-221 credit in HB203, they would have done so explicitly. (That said, perhaps the legislature should pass a bill in 2023 that allows the section 9-221 credit to be issued one year retroactively, but that's a separate matter.)
2. If HB203 covers the 9-221 credit (as you assert), issuing the 9-221 credit while not issuing the Homestead Credit to properties that do not have a homestead credit application on file is plainly inconsistent. To be consistent, if the county is going to issue the 9-221 credit on the basis that the homeowner *might* submit a retroactive Homestead Credit application under HB203, then the county should also issue the Homestead Credit (where applicable) to properties that do not have a Homestead Credit application on file at SDAT. However, that would be highly problematic, as explained in the next paragraph.
3. The current process -- issuing the 9-221 credit to properties that do not have a Homestead Application on file with SDAT -- will cause the 9-221 credit to be issued to thousands of properties that will likely not submit a Homestead Credit application under the HB203 extension. It will be virtually impossible to retroactively bill and collect the \$692 credit in 2023 from property owners who improperly received the section 9-221 credit in 2022 and do not submit a retroactive Homestead Credit Application in 2023.

For the above reasons, I think that the correct interpretation interpretation of the current 9-221 law requires that the \$692 credit authorized by section 9-221 be removed from from the 2022 tax bills of properties that do not have a homestead credit application on file with SDAT.

I am copying the sponsor of HB1200, Del. Eric Luedtke, on this email in case he has any comments to add.

Louis

On 7/1/2022 10:44 AM, Coveyou, Michael wrote:

Hello Mr. Wilen,

You are correct that HB1200 of 2020 is effective beginning June of this year, but the State passed HB203 a few months ago that gives homeowners until 2023 to qualify for the tax credits given in FY23. You can refer to this webpage for details on how HB1200 will be applied—homeowners who do not have a Homestead application by the 2023 deadline (May 1, 2023) will have the FY23 ITOC removed next spring:

<https://www.montgomerycountymd.gov/Finance/itoc.html>

Take care, and Happy Independence Day!

Mike

From: Louis Wilen <louiswilen@gmail.com>

Sent: Friday, July 1, 2022 2:00 AM

To: Coveyou, Michael <Michael.Coveyou@montgomerycountymd.gov>

Subject: Many property tax bills possibly incorrect -- ITOC improperly applied

[EXTERNAL EMAIL]

Mike,

It seems that many 2022 (FY 2023) tax bills are incorrect. The \$692 COUNTY PROPERTY TAX CREDIT (MD Property Tax Code section 9-221 credit) is being applied to property tax accounts that do not have a homestead credit application on file with SDAT, as shown near the bottom of the online assessment record. A law passed in 2020 that I believe became effective with the 2022 (FY 2023) tax bills requires that the section 9-221 credit be issued only to properties that have a Homestead Property Tax Credit application on file with SDAT.

Am I interpreting the law correctly? The key phrase seems to be "shall be applicable to all taxable years beginning after June 30, 2022". Doesn't that mean starting with FY 2023?

As a random example (and I can give you thousands more examples, if needed), the property at 7230 Minter Place, property tax account number 03161786, does not have a homestead credit application on file with SDAT but the \$692 credit is still appearing on the tax bill for that property.

Thank you in advance for looking into this matter.

Louis Wilen
301-551-3636



Subject: Fwd: Many property tax bills possibly incorrect -- ITOC improperly applied
From: Louis Wilen <louiswilen@gmail.com>
Date: 4/7/2023, 12:35 PM
To: Louis Wilen <louiswilen@gmail.com>

Stanford Ward (writer of the email below) is a MD state legislative attorney (his job is to provide formal advice to the legislators when they draft laws) and Alfred Carr was a state delegate at the time this email was written.

----- Forwarded message -----

From: Ward, Stanford <Stanford.Ward@mlis.state.md.us>

Date: Wed, Jul 6, 2022, 4:00 PM

Subject: RE: Many property tax bills possibly incorrect -- ITOC improperly applied

To: Al Carr <alfred.carr@gmail.com>

Cc: Carr, Alfred Delegate <Alfred.Carr@house.state.md.us>, Luedtke, Eric Delegate <Eric.Luedtke@house.state.md.us>

The law applies to the tax bills that are being sent out now, that is, to the taxes due for this taxable year, which runs from July 1, 2022 to June 30, 2023. **So the county is not complying with the law.**

From: Al Carr <alfred.carr@gmail.com>

Sent: Friday, July 01, 2022 10:36 AM

To: Ward, Stanford <Stanford.Ward@mlis.state.md.us>

Cc: Carr, Alfred Delegate <Alfred.Carr@house.state.md.us>; Luedtke, Eric Delegate <Eric.Luedtke@house.state.md.us>

Subject: Fwd: Many property tax bills possibly incorrect -- ITOC improperly applied

Hi Stan,

Do you know the answer to Mr. Wilen's question?

Thanks,

Al

----- Forwarded message -----

From: Louis Wilen <louiswilen@gmail.com>

Date: Fri, Jul 1, 2022 at 10:16 AM

Subject: Fwd: Many property tax bills possibly incorrect -- ITOC improperly applied

To: Al Carr <alfred.carr@gmail.com>

Hi Al,

HB1200 of 2020 was not your bill but I think you'll know the answer to my question below since a similar statement about effective date appears in all legislative bills.

Am I correct that the law should have been applied to the 2022 (FY 2023) tax bills that just came out? Or does the law apply starting with the tax bills that will come out in July 2023, which cover FY 2024?

Louis

----- Forwarded Message -----

Subject:Fwd: Many property tax bills possibly incorrect -- ITOC improperly applied

Date:Fri, 1 Jul 2022 10:12:09 -0400

From:Louis Wilen <louiswilen@gmail.com>

To:Luedtke, Eric Delegate <eric.luedtke@house.state.md.us>

Dear Delegate Luedtke,

You sponsored HB1200 of 2020 to correct a large property tax leakage problem. If I understand the bill correctly, it goes into effect starting with the property tax bills that came out today, July 1. Or am I misinterpreting the last sentence in the bill?

The bill is at:

<https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/hb1200?ys=2020RS&search=True>

Thank you for your anticipated reply.

Louis Wilen
Olney
301-551-3636