Agenda Item 18
January 17, 2017
Public Hearing

MEMORANDUM

January 13, 2017

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: **Public Hearing:** Bill 48-16, Taxation – Credit to Offset Certain Income Tax Revenues - Amendments

Bill 48-16, Taxation – Credit to Offset Certain Income Tax Revenues - Amendments, sponsored by Lead Sponsor Government Operations and Fiscal Policy Committee and Co-Sponsor Councilmember Rice, was introduced on December 6, 2016. A Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for January 30, 2017 at 10:30 a.m.

Bill 48-16 would clarify the eligibility for the property tax credit to offset certain income tax revenues.

Background

Maryland law permits counties to provide a property tax credit to offset a portion of the income tax levied. Under Md. Code, Tax-Property §9-221 (Property Tax Credit for Income Tax Offset or ITOC), the credit is only available to the owner-occupied property of a homeowner, as described in Md. Code, Tax-Property §9-105 (Homestead Tax Credit),[1] which in turn defines a homeowner as an individual having a legal interest in a dwelling. A dwelling is then defined as a house or unit that is used as a principal residence and is actually occupied as such (or expected to be occupied as such) for at least 6 months out of the relevant 12 month period.

Montgomery County implemented the property tax credit for income tax offset[2] law in County Code §52-86, which states that an "eligible taxpayer is any homeowner who *qualifies* for a homestead property tax credit under Maryland Code, Tax-Property Article, Section 9-105, or any successor provision." The Montgomery County law further states that a taxpayer need not file an application to receive the income tax offset credit.

[1] The State Homestead Tax Credit is a "circuit-breaker" that limits the amount of any annual property tax increase for homeowners who use the home as a principal residence and occupy it as such for at least 6 months out of the relevant 12 month period. The impact of this "circuit-breaker" protection is felt during periods of rapidly rising assessments. The effect of the credit is to spread the increase out over multiple years.

[2] The amount of the County's property tax credit for income tax offset is set annually by resolution. For FY17, the credit is $692 per eligible homeowner. Approximately 244,000 taxpayers will receive the credit in FY17.

Several years later, the State of Maryland amended Tax-Property §9-105 (Homestead Tax Credit). The amendment added a new requirement to the Homestead Tax Credit law: to qualify for the credit under this section, a homeowner must submit an application for the credit to the State.

This change to the Homestead Tax Credit law has resulted in some confusion about the County's property tax credit for income tax offset.

Discussion

1. ***Is there a link under Maryland law between the State Homestead Tax Credit and the State law enabling counties to implement a property tax credit for income tax offset?***

No. As noted above, Tax-Property §9-221 (Property Tax Credit for Income Tax Offset) **does** incorporate by reference the definition of "homeowner" in Tax-Property §9-105 (Homestead Tax Credit). There is no other link under State law between these two sections of the Tax-Property Article. **There is no indication that the legislature intended, by adding the Homestead Tax Credit application requirement, to affect eligibility for any local income tax offset credits.** At the time the Homestead application requirement was enacted, SDAT advised the County Department of Finance that the Homestead application requirement was not intended to affect anything other than the Homestead Tax Credit, and SDAT implemented the application requirement in a way that ensured that it did not affect other credits.

2. ***Is there a link under Montgomery County law between the County's property tax credit for income tax offset and the State's Homestead Tax Credit law?***

Yes. Montgomery County Code §52-86 entitles eligible taxpayers to receive a property tax credit to offset certain income tax revenues. An eligible taxpayer is any homeowner who *qualifies* for a homestead property tax credit under Maryland Code, Tax-Property Article, Section §9-105, or any successor provision. This reference allows Montgomery County to refer to an existing definition in the State code, thereby limiting the number of statutory definitions. Unfortunately, it also adds ambiguity to the County law by appearing to allow Montgomery County to piggyback on the State's determination of eligibility for the Homestead Tax Credit.

The County Attorney and the Department of Finance have consistently interpreted the County income tax offset credit law to not require a taxpayer to file the State application for the Homestead Credit.

3. ***Has the Council ever decided as a matter of policy that Montgomery County taxpayers must satisfy the application requirement of the State's Homestead Tax Credit law in order to receive the County's property tax credit for income tax offset?***

No. There is no evidence to suggest that the County Council ever made a policy decision that Montgomery County taxpayers, in order to be eligible to receive the property tax credit for income tax offset, must satisfy the application requirement of the State's Homestead Tax Credit. The County's property tax credit for income tax offset was created in 1998, and the changes to the State Homestead Tax Credit law occurred in 2005. Furthermore, **the County's law expressly states that a taxpayer need not file an application to receive the County's credit.** Therefore, the County law states a policy that eligibility would not depend on whether or not a taxpayer had completed an application or certification form.

4. ***Has Montgomery County ever informed taxpayers that they would lose their property tax credit for income tax offset if they do not submit an application to the State for the Homestead Tax Credit?***

No. Consistent with Montgomery County's interpretation that there is no connection between the property tax credit for income tax offset and the State application for the Homestead Tax Credit, and the unambiguous position from SDAT at the time they initiated the homestead credit application process, the Department of Finance has indicated that there has never been any public information campaign to warn County taxpayers that they would lose their property tax credit for income tax offset if they do not apply for the State's Homestead Tax Credit.

Government Operations and Fiscal Policy (GO) Committee Worksession.

On June 30, 2016, the GO Committee discussed these issues in a worksession on the income tax offset credit law. The Committee requested staff to work with Finance to draft legislation that would clarify that a property owner did not need to qualify for the State Homestead Tax Credit in order to be eligible for the County ITOC. Bill 48-16 would clarify the County's interpretation of the current law and remove any ambiguity that has arisen since the State began requiring a property owner to apply for the State Homestead Tax Credit.

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Bill No. 48-16
Concerning: Taxation – Credit to Offset Certain Income Tax Revenues - Amendments
Revised: October 24, 2016 Draft No. 4
Introduced: December 6, 2016
Expires: June 6, 2018
Enacted: ______
Executive: ______
Effective: ______
Sunset Date: None
Ch. _____, Laws of Mont. Co. ______

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Government Operations and Fiscal Policy Committee
Co-Sponsor: Councilmember Rice

AN ACT to:
(1) clarify the eligibility for the credit to offset income tax revenues; and
(2) generally amend the law governing the credit to offset income tax revenues.

By amending
Montgomery County Code
Chapter 52, Taxation
Section 52-86

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 52-86 is amended as follows:

52-86. Credit to offset certain income tax revenues.

(a) The Director of Finance must 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] for each property that is an owner-occupied dwelling of a homeowner as defined in Md. Tax-Property Code §9-105(a), as amended.

(b) The Director must not grant the credit if the Director finds that the property is not an owner-occupied property of a homeowner. [An eligible taxpayer is any homeowner who qualifies for a homestead property tax credit under Maryland Code, Tax-Property Article, Section 9-105, or any successor provision.]

* * *

Approved:

Roger Berliner, President, County Council — Date

Approved:

Isiah Leggett, County Executive — Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council — Date

LEGISLATIVE REQUEST REPORT

Bill 48-16
Taxation – Credit to Offset Certain Income Tax Revenues - Amendments

DESCRIPTION:	Bill 48-16 would clarify that a property owner did not need to qualify for the State Homestead Tax Credit in order to be eligible for the County property tax credit to offset income tax.
PROBLEM:	Legislative changes to the State Homestead Tax Credit law requiring a homeowner to apply for the State credit has resulted in some confusion about the County's property tax credit to offset income tax.
GOALS AND OBJECTIVES:	Clarify the eligibility for the County property tax credit to offset income tax.
COORDINATION:	Department of Finance, County Attorney
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	Not applicable.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	Yes.
PENALTIES:	None

ROCKVILLE, MARYLAND

MEMORANDUM

January 9, 2017

TO: Roger Berliner, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Alexandre A. Espinosa, Director, Department of Finance

SUBJECT: FEIS for Bill 48-16, Taxation - Credit to Offset Certain Income Tax Revenues - Amendments

Please find attached the fiscal and economic impact statements for the above-referenced legislations.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
David Platt, Department of Finance
Dennis Hetman, Department of Finance
Jane Mukira, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Bill 48-16, Taxation – Credit to Offset Certain Income Tax Revenues - Amendments

1. Legislative Summary

   Bill 48-16 would clarify the eligibility for the property tax credit to offset certain income tax revenues. It would clarify that the Director of Finance has the authority to remove a credit when the Director finds that the property is not owner-occupied. Currently the Department of Finance reviews and identifies properties that are not owner-occupied (they are normally rental properties, and have rental licenses issued by the Department of Housing and Community Affairs) and provides that list of non-owner-occupied properties to the State Department of Assessments and Taxation (SDAT). SDAT can use this information to update the occupancy status of the subject properties to "not owner-occupied." However, SDAT is not always able to update the occupancy status in a timely manner, and therefore this legislation clarifies that the Director of Finance has the authority to update this status, for the purpose of correctly providing Income Tax Offset Credits.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

   The Department of Finance's Compliance Unit has identified approximately 6,000 property tax accounts as being rental properties and not owner-occupied. Only owner-occupied properties are eligible for the income tax offset credit (ITOC). The value of 6,000 credits is $4,152,000 (6,000 x $692). Removing the ITOC from 6,000 property accounts would not necessarily increase County property tax revenues because of the Charter limit on real property tax revenues.[1]

   The Department of Finance assumes that most taxpayers will appeal removal of the ITOC and about half of the appeals will be successful, in that the taxpayer will be able to demonstrate that the property is owner-occupied (using driver's license, income tax return, etc.). This assumption is based on prior experience with the State Department of Assessments and Taxation (SDAT). Since 2012, the Department has transmitted the Compliance Unit's findings to SDAT to update the assessment data and remove these credits, but over half of the credits that SDAT initially removed have been reversed based on successful challenges by taxpayers. If taxpayers appeal removal of the credit and that half are successful, the value of the denied credits would be reduced to $2,076,00.

   It is anticipated that managing the process of removing the ITOC will cause additional workload for the Department of Finance and MC311. The Department will have to issue tax refunds for successful appeals of the removed/denied credits, and MC311 will likely experience an increase in questions from taxpayers who have been found ineligible for the ITOC. Many of the contacts that MC311 must deal with will result in a Service Request (SR) that will be handled by the Department of Finance. It is difficult to estimate the additional workloads on MC311 and Finance, but if each contact takes two minutes,

[1] Section 305 of the County Charter limits the growth in real property tax revenues in a fiscal year to the rate of inflation, excluding new construction, newly rezoned property, development districts, etc. The Council may override this limitation with an affirmative vote of nine Councilmembers.

and 6,000 contacts are made, then 200 hours of work will be spent on direct customer service at MC311 alone.

For Finance, the additional workload will impact other priorities, including processing other tax refunds and other tax credits, as well as posting tax payments, thereby reducing the level of customer service to the public (assuming no additional resources are provided to manage this process).

3. Revenue and expenditure estimates covering at least the next six fiscal years.

   The amount of the Income Tax Offset Credit is expected to be reduced between $2.1 million to $4.2 million per year, or $12.6 million - $25.2 million over six years. As explained in #2 above, this is not expected to change County property tax revenues.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

   Not applicable.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

   The Department of Finance has been working with the Department of Technology Services to implement coding changes that are necessary to implement local determination of eligibility for the ITOC. The Department anticipates that these changes will be delivered and tested in time to implement by next tax year.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

   Not applicable, the bill does not authorize future expenditures.

7. An estimate of the staff time needed to implement the bill.

   Not including the coding changes to be made by DTS, the bill should take less than 40 hours to implement. This includes testing by Treasury functional staff, after delivery of the updated software.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

   See #2 above. This work is now substantially done by the Treasury Division, except for Treasury staff changing the status of the credit in the Tax Assessment System. Currently this work is given to the State Department of Assessments and Taxation for input into the tax roll, but SDAT is not able to make these changes in a timely manner. This bill clarifies that County staff may make these changes, and this is the purpose of change to the Tax Assessment System.

9. An estimate of costs when an additional appropriation is needed.

   Not applicable.

10. A description of any variable that could affect revenue and cost estimates.

    The number of properties that are ineligible for the credit can either increase or decrease. The number of taxpayers appealing the removal of the ITOC may also be different than assumed.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

    See #2 and #3 above. The number of successful appeals for removal of the credit cannot be projected. Successful appeals increase refunds to taxpayers, and increase the workload of the Department of Finance.

12. If a bill is likely to have no fiscal impact, why that is the case.

    Not applicable.

13. Other fiscal impacts or comments.

    None.

14. The following contributed to and concurred with this analysis:

    Mike Coveyou, David Platt, Dennis Hetman, Department of Finance

    Jane Mukira, Office of Management and Budget

JAHughes

Jennifer A. Hughes, Director
Office of Management and Budget

1/6/17
Date

Economic Impact Statement
Bill 48-16, Taxation – Credit to Offset Certain Income Tax Revenues - Amendments

Background:

Bill 48-16 clarifies the eligibility for the property tax credit to offset certain income tax revenues – the income tax offset credit (ITOC). Montgomery County implemented the ITOC law in County Code §52-86 such that an eligible taxpayer is any homeowner whose property qualifies as an owner-occupied dwelling under Maryland Code, Tax-Property Article, Section 9-105 (Homestead Tax Credit, or HSTC) or successor provision. The County law also states that a taxpayer need not file an application to receive the ITOC. After the County enacted the ITOC, the State of Maryland amended Tax-Property Article, Section 9-105 by adding a new requirement to the HSTC law that in order to qualify for the HSTC, a homeowner must submit an application to the State. While this change to the HSTC law has resulted in some confusion about eligibility for the County's ITOC, the County has consistently interpreted its ITOC law to mean that eligibility is based on owner-occupancy not on whether a property owner is qualified for or receives the State Homestead Tax Credit. The proposed legislation clarifies the County's interpretation of current law and also clarifies that the Director of Finance must not grant the ITOC if the Director finds that the property is not an owner-occupied property of a homeowner.

1. The sources of information, assumptions, and methodologies used.

The sources of information and data are from Treasury Division (Treasury), Department of Finance. According to Treasury, as of the Fall of 2016, there are approximately 6,000 property tax accounts identified as rental properties. As rental properties, these property accounts should not receive the income tax offset credit of $692, which equates to property tax revenue of $4,152,000.

Under current property tax law and procedure, a taxpayer may appeal the change from owner-occupied status to not-owner-occupied status. The Department estimates that most taxpayers will appeal the change and approximately fifty percent of the appeals will be successful; that is, retain the status of owner-occupied residence. The reason for the success rate of such appeals is based on previous experience when the Department transmitted changes in status to the Maryland State Department of Assessments and Taxation (SDAT) and such changes were reversed by SDAT.

Assuming half of these properties successfully appeal a change in their status and retain the ITOC, the estimated change in property tax revenue is reduced from $4,152,000 to $2,076,000.

2. A description of any variable that could affect the economic impact estimates.

The variables that could affect the economic impact estimates are: 1) the number of accounts currently receiving the credit but are ineligible, and 2) the amount of the credit, which is currently $692.

Economic Impact Statement
Bill 48-16, Taxation – Credit to Offset Certain Income Tax Revenues - Amendments

3. **The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.**

Bill 48-16 would not have an economic effect on employment, savings, investment, and property values in the County. The legislation would have a minimum impact on total County incomes and spending. Assuming the Charter Limit, taxpayers whose real property classification is no longer classified as owner-occupied property would experience a slight increase in property taxes, but taxpayers whose real property is classified as owner-occupied property would experience a slight decrease in property due to a lower property tax rate or higher ITOC.

4. **If a Bill is likely to have no economic impact, why is that the case?**

See #3

5. **The following contributed to or concurred with this analysis:** David Platt, Michael Coveyou, and Rob Hagedoorn, Finance.

Alexandre Espinosa, Director
Department of Finance

12/22/2016
Date