



OFFICE OF THE INSPECTOR GENERAL MONTGOMERY COUNTY MARYLAND

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INSPECTOR GENERAL

Carryout Bag Tax

Department of Finance and Department of Environmental Protection

OIG Publication # OIG-23-15

JUNE 13, 2023

EXECUTIVE SUMMARY

The Montgomery County Office of the Inspector General (OIG) initiated this review to determine if the county is receiving carryout bag tax payments from all retail establishments required to remit payment. The County Council passed Bill 8-11 in May 2011 implementing a carryout bag tax to help fund the county's stormwater management program to support the goals of a cleaner environment. Under Bill 8-11, certain Montgomery County retail establishments are required to charge customers 5 cents on each paper or plastic bag they use and in turn remit 4 cents per bag to the county, keeping 1 cent to cover administrative costs associated with the carryout bag tax. Funds remitted under the tax are deposited into the Water Quality Protection Charge fund, administered by the Department of Environmental Protection (DEP).

OBJECTIVES

Through this review, we sought to evaluate the county's efforts to (1) Identify all retailers who are required to collect carryout bag tax, and (2) Ensure that those retailers identified have remitted taxes.

SCOPE & STANDARDS

Our review was conducted between January 2023 and April 2023, in accordance with the Association of Inspectors General, *Principles and Standards for Offices of Inspectors General, Quality Standards for Inspections, Evaluations, and Reviews* (May 2014).

RESULTS

- The county has not established a method to identify all retailers that should be remitting carryout bag tax.
- Data limitations and shortcomings in the Bag Tax System makes enforcement of the carryout bag tax problematic.
- The \$100 remittance threshold makes program enforcement and assessment of penalties difficult.
- Some county retailers are not complying with the carryout bag tax requirements.
- The county should do more to assess the impact of the carryout bag tax.

RECOMMENDATIONS

- Identify all retailers who are required to remit carryout bag tax and proactively ensure the retailers are informed and remitting the appropriate taxes.
- Require retailers to identify by name and address each location they are filing for and enforce the requirement that retailers provide a report of all transactions subject to the tax.
- Pursue legislative changes to remove the \$100 remittance threshold or administratively modify the requirement to remit payment on a defined basis.
- Actively enforce the carryout bag tax law and pursue fines for those in noncompliance.
- Routinely assess the impact of the law on consumer behavior and litter in area waterways.

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BACKGROUND

Disposable carryout bags provided by retail businesses are among the top litter items found in county neighborhoods and waterways. In 2009, county agencies spent approximately \$3.3M of appropriated funds on litter prevention and removal programs. Staff from the Department of Environmental Protection (DEP) testified before the County Council's Transportation, Infrastructure, Energy and Environment Committee in April 2011 and highlighted that both paper and plastic bags consume enormous amounts of natural resources and cause significant pollution. The Committee noted that a tax on carryout bags would both raise revenue to offset waterway cleanup costs and also create an incentive for consumers and retailers to use fewer disposable bags.

On May 3, 2011, the County Council enacted Bill 8-11 which became effective on January 1, 2012, requiring certain retail establishments that provide a plastic or paper carryout bag to charge consumers 5 cents per bag.¹ The intent of the carryout bag tax was to shift a portion of litter cleanup costs from taxpayers to consumers, while offering a choice to avoid the 5-cent charge by bringing reusable bags. Retailers are allowed to retain 1-cent from each 5-cent tax they collect to cover administrative expenses associated with the collection and remittance of the tax. All revenue collected from the carryout bag tax is deposited into the county's Water Quality Protection Charge (WQPC) fund.² The WQPC fund is administered by DEP and supports many of the county's clean water initiatives.

The Department of Finance (Finance) is responsible for the financial administration of county government, including accounting and payroll, debt and cash management, tax billing and revenue collection, economic and revenue forecasting, and risk management. Bill 8-11 identified Finance as the agency responsible for administering and enforcing the carryout bag tax. However, on October 27, 2022, Finance signed a formal Memorandum of Understanding with DEP delegating the authority to enforce collection of the carryout bag tax, including the authority to investigate retail establishments for violations and to impose civil penalties pursuant to the statute.³

DEP states that its mission is to "enhance the quality of life in our community by protecting and improving Montgomery County's air, water, and land in a sustainable, innovative, inclusive, and industry-leading way while fostering smart growth, a thriving more sustainable economy and healthy communities." In furtherance of these goals, DEP oversees various initiatives and programs such as recycling, stormwater management, and water quality protection.

In 2012, Finance established the Bag Tax Registration and Payment System (Bag Tax System) to manage the registration of vendors and collection of bag taxes. Upon registering with the Bag Tax System, businesses are assigned a unique vendor ID number which they use to self-

¹ Exceptions to the carryout bag tax can be found at County Code Sec. 52-77.

² The WQPC fund is primarily comprised of assessments on property tax bills.

³ County Code Sec. 52-83 Enforcement. "Any violation of this Article is a Class A civil violation..."

report the number of bags sold during the reporting period. The system automatically calculates the amount of tax due based on the number of bags reported by the retailer. Retailers are not required to remit the tax until the cumulative amount of tax collected exceeds \$100. Table 1 shows the total number of bags retailers reported as sold and the corresponding tax remitted for fiscal years (FY) 2018 through 2022.

Table 1: Bag Tax Collected, FY2018 - FY2022⁴

	FY18	FY19	FY20	FY21	FY22
Bag Count	64,294,280	64,174,189	65,479,117	68,901,941	74,767,567
Tax Remitted	\$2,571,774	\$2,566,968	\$2,619,166	\$2,754,403	\$2,990,701
No. of Retail Payors	735	693	814	639	600
Average Remittance Per Payor	\$3,499.01	\$3,704.14	\$3,217.65	\$4,310.49	\$4,984.50
Total No. of Registrants	1,561	1,605	1,903	1,929	1,951

The Montgomery County Office of Internal Audit (MCIA) published Report No. 14-7 on May 6, 2014, detailing its findings from a review of the carryout bag tax program. The MCIA report presented two notable findings that continue to be cause for concern. MCIA found that Finance had not established a population of retailers that should be remitting carryout bag tax and they were also not enforcing interest and penalties as provided by Bill 8-11. To address these findings, MCIA recommended that Finance collaborate with CountyStat staff to research the feasibility of creating a master listing of retailers who should be remitting the carryout bag tax. Doing this would have assisted the county in identifying retailers who may not be remitting as required. Additionally, MCIA recommended that Finance develop and publicize a formal strategy to enforce current tax regulations that describe interest and penalties that may be imposed on non-compliant retailers.

While MCIA's findings were directed at Finance, the report was sent to both Finance and DEP for comment. In a joint response, Finance and DEP generally agreed with MCIA's recommendations and indicated both departments would work towards making the recommended improvements to the carryout bag tax program. In subsequent status updates provided to MCIA, Finance reevaluated the recommendations and determined that they were not feasible.

⁴ Bag count and tax remittance figures obtained from the Bag Tax System on January 27, 2023.

Objectives, Scope, and Methodology

We used the aforementioned MCIA report to inform our objectives for this review. Specifically, we sought to evaluate the county's efforts to (1) identify all retailers who are required to collect carryout bag tax, and (2) ensure that those retailers identified have remitted taxes. In conducting this review, we interviewed county contractors, staff, and management, and reviewed relevant law, regulation, and policy.

We conducted two tests involving separate judgmental samples of retailers in the county. The first test included seven retailers that remitted at least \$250 of carryout bag tax in FY2020, then remitted nothing for FY2021 and FY2022. For the second test, we chose seven different retailers that: (1) appeared to be active businesses in the county; (2) are not registered in the Bag Tax System; and (3) based on their North American Industry Classification System (NAICS)⁵ code, are the type of business that likely provides carryout bags. For each of the retailers tested, we purchased one or more items and requested a carryout bag. OIG staff received a bag at each location and retained their receipt.

Our review was conducted between January 2023 and April 2023, in accordance with the Association of Inspectors General, *Principles and Standards for Offices of Inspector General, Quality Standards for Inspections, Evaluations, and Reviews* (May 2014).

⁵ The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

FINDINGS AND RECOMMENDATIONS

Our review found that poor administration and implementation of the carryout bag tax law has diminished its potential impact. These deficiencies have resulted in the county not collecting thousands of dollars that could be used to defray the cost of litter cleanup efforts. In FY2021, citing a need to supplement program funding, the county increased the WQPC assessed on property taxes. Better enforcement of the carryout bag tax could help minimize the tax impact on residents. Further, the county's limited efforts to assess the impact of the carryout bag tax on consumer behavior and reduction of plastic bag litter does not provide enough data to determine the effectiveness of the carryout bag tax.

Finding 1: The county has not established a method to identify all retailers that should be remitting the carryout bag tax, potentially resulting in missed revenue and decreased program efficacy.

MCIA's 2014 audit of the carryout bag tax program found that "Treasury does not have a master list of the retailers who are required to remit bag tax and therefore is unable to determine if retailers are reporting." The audit concluded that "creating a master list and periodically comparing submissions to the list would assist the County in being aware of those who may not be remitting timely, or at all, and allow the County [to] be proactive and better assure retailer accountability." MCIA recommended that Finance work with CountyStat to "research potentially creating a master listing of retailers who should be remitting the bag tax."

Finance and DEP initially agreed with the recommendation, but Finance later reported through a status update that "it is neither feasible nor cost-beneficial" to develop a comprehensive list of retailers who should be remitting carryout bag tax. Finance further stated:

"Even if such a master listing could be readily compiled, that listing would not necessarily be beneficial in easily determining if retailers are paying untimely or underpaying, the two primary risks associated with this self-reported tax. For retailers paying the tax every month, the existence of a master listing would not assist the County in affirming if the self-reported tax was accurate."

Finance's assertion that a list would not be "beneficial in easily determining if retailers are paying untimely or underpaying" has merit but misses the point behind having such a list. The list would be beneficial in identifying businesses that should be remitting taxes to help target education efforts, assist with forecasting revenue, identifying program weaknesses, and driving enforcement activities.

MCIA's report presented an option to use a list generated by the Department of Health and Human Services (HHS) that details establishments required to have health inspections conducted. The list includes retailers that sell food products, grocery stores, and even retailers

that sell candy. MClA noted that while this list is not perfect, “it would provide Treasury with a good baseline list from which to start developing a comprehensive list of retailers who should remit the tax.” Seemingly, Finance discounted the benefits of using HHS’s list and did not establish another means to identify the population of retailers that should be remitting carryout bag tax.

The OIG explored the feasibility and merits of leveraging information available through other county programs to create a database of businesses subject to the carryout bag tax. We discussed our observations with DEP management and learned that they had assessed several data sources and determined that most of the information generated through these programs was not helpful in creating a comprehensive list of retailers subject to the carryout bag tax because it was incomplete, dated, or not easily matched to information in the Bag Tax System.

DEP informed us that in 2018, based on their own evaluation of available data sources, they determined a list could be established using information from the Maryland Department of Labor, Licensing and Regulation (DLLR). DEP compared the DLLR list of retailers to those registered in the county’s Bag Tax System and identified approximately 1,550 retailers who likely should have been paying carryout bag tax but were not registered in the Bag Tax System. DEP sent letters to the identified retailers and subsequently saw 262 new registrants, resulting in \$28,197 in additional tax revenue that year.

DEP was unable to maintain a current list of retailers because they did not have the resources required to continually reconcile the two lists at the time. DEP reported that they recently hired a full-time employee to oversee the enforcement of the carryout bag tax program with emphasis on identifying all businesses subject to the law and developing and implementing strategies and processes for increasing compliance.

As part of our review, we analyzed DLLR data for retailers in the county as of March 2022 and identified approximately 2,100 retailers who likely should have been paying carryout bag tax but were not registered in the Bag Tax System and did not remit carryout bag tax.⁶ This equates to a minimum in lost revenue per year of approximately \$210,000, assuming these retailers would have each remitted *at least* the minimum threshold of \$100 in carryout bag tax. The actual amount of lost revenue, however, could be as high as \$8.2 million per year if all 2,100 unaccounted retailers remitted the average remittance⁷ received by payors over the last five fiscal years.

In researching other Maryland jurisdictions’ implementation of carryout bag taxes, we noted that Howard County used information from the state’s trader’s license database to determine subject retailers. A trader’s license is required for any business buying and re-selling goods.

⁶ The OIG identified these retailers based on if they (1) appeared to be active businesses in the county; (2) were not registered in the Bag Tax System; and (3) were the type of business that likely provides carryout bags based on their NAICS code.

⁷ The average annual remittance per payor from FY18-FY22 is \$3,943.16.

Information on all licensees is accessible through the Circuit Court License Departments in each county.

We obtained a list from the Montgomery County Circuit Court of all trader's licenses issued to retailers in Montgomery County. We learned that Montgomery County is unique in that all restaurants are required to have a trader's license whereas other counties issue a separate restaurant license. Thus, it appears this comprehensive list of all trader's licenses issued to county retailers would be a solid foundation upon which to build a database of retailers required to remit carryout bag tax. Using the trader's license data obtained from the Circuit Court, we calculated that currently approximately 3,800 retailers likely should be remitting carryout bag tax. The Bag Tax System contains only 1,951 registered retailers, and only 600 of those remitted taxes in FY2022. Establishing and maintaining a complete list of retailers who must remit carryout bag tax would increase the efficiency and effectiveness of the administration of the program and likely increase tax revenue, supporting the goal of shifting the burden of litter cleanup costs from taxpayers to consumers.

Recommendation 1

We recommend the county

- a) **Establish and document a process to continually identify all retailers who are required to remit carryout bag tax.**
- b) **Proactively pursue retailers who they've identified as being subject to complying with the carryout bag tax to ensure they are educated on the requirements of the tax and charging and remitting appropriate taxes.**

Finding 2: Data limitations and shortcomings in the Bag Tax System make enforcement of the carryout bag tax problematic.

In assessing the information collected from registrants and payors through the Bag Tax System, we found issues with the type of information collected and a general failure to analyze the information reported. The Bag Tax System allows registrants to file tax remittances for multiple locations under one account without specifying the location or name of the businesses. Retailers with multiple locations, for example, could report all taxes collected in one entry. The county has no way of knowing how much was being remitted per store, how many bags were distributed per store, or even if all locations were remitting the tax at all.

Compounding the issues associated with not requiring retailers to report carryout bag tax information by location is the fact that the Bag Tax System does not require/allow retailers to

submit supporting documentation for the taxes collected. County Code Section 52-79 (c) states that “each remittance must be accompanied by a report of all transactions that involve bags subject to the tax...” Not including this information impacts the county’s ability to provide effective oversight and makes subsequent audits of payments difficult and time-consuming.

During our review we also learned that the county has made no attempts to reconcile the number of payors to registrants. In fact, the Bag Tax System has not been purged of registrants since the program was enacted in 2012. The county does not actively examine registrant activity to look for indications of problems with registrant data or evidence of noncompliance with the remittance of taxes, such as stopping remittances or significant changes in remittance amounts. These efforts could help the county improve the administration of the carryout bag tax program, ensure equitable enforcement and participation, and potentially increase revenue derived from the program.

Recommendation 2

We recommend the county

- a) **Require retailers remitting for multiple locations to identify by name and address each location they are filing for and the associated number of bags and amounts collected.**
- b) **Enforce the statutory requirement that each remittance must be accompanied by a report of all transactions that involve bags subject to the tax.**

Finding 3: The \$100 remittance threshold makes program enforcement and assessment of penalties difficult.

Unlike other excise taxes in the county which are due on a predefined schedule, retailers are only required to remit carryout bag tax when the cumulative taxes collected exceed \$100. County Code Sec. 52-79 (b) states “A retail establishment is only required to remit the taxes to the Director [of Finance] when the cumulative taxes collected under Section 52-78(a) since the previous remittance, if any, exceeds \$100.” As a result, some retailers remit taxes monthly while others may go several months or years between remittances. This makes it difficult for administrators to forecast expected revenue, know when retailers are not paying what is owed, and properly assess penalties.

This issue was raised by Finance in a 2015 status update to MCIAs 2014 audit. Finance explained that although a company may have paid tax in a prior month it does not mean that they have any liability in a particular future month. Finance management told us that if the

carryout bag tax did not have the \$100 threshold and was required to be paid monthly similar to other excise taxes, enforcement and tracking of payments would be much easier.

Similarly, the \$100 remittance threshold hinders the county's ability to properly assess interest and penalties on late payments, as directed in County Code Sec. 52-80. In its 2014 report, MCI noted that "the County is foregoing potential revenue and there is an increased possibility that retailers may become lax in the accuracy and timing of remittances if the County continues to not charge interest or impose a penalty on remittance violations." Because tax amounts and related information is self-reported and due only when retailers have met the threshold, it is difficult for administrators to determine when payments are past due and therefore limits their ability to assess interest and penalties as required by county law.

The \$100 remittance threshold is hampering the county's ability to administer the carryout bag tax program and adversely affecting the amount of revenue collected.

Recommendation 3

We recommend the county pursue legislative changes to remove the \$100 remittance threshold or administratively modify the requirement to remit payment on a defined basis.

Finding 4: Some county retailers are not complying with the carryout bag tax requirements.

We conducted two separate tests to evaluate retailer compliance with the carryout bag tax. In our first test, we selected a targeted sample of 7 retail locations that had remitted at least \$250 in carryout bag tax in FY2020 but did not remit any taxes for FY2021 and FY2022. We made purchases at each location and received carryout bags at each one. Of the 7 locations visited, 5 charged OIG staff for the carryout bag while 2 did not.

In our second test we attempted to determine the benefit of actively evaluating retailer behavior to determine potential lost revenue. We made purchases at 7 randomly selected retailers who appeared on the DLLR list and were likely to provide carryout bags based on our assessment of their NAICS code but were not registered with the Bag Tax System. Six retailers provided OIG staff with a carryout bag but did not charge the required tax. At the seventh location, the receipt provided was not itemized and we were unable to determine if we were charged the required tax.

Our tests concluded there are retailers that charge a carryout bag tax but may not be remitting the tax collected to the county, and retailers in the county who provide carryout

bags to their customers but do not charge the required tax and are not registered in the county's Bag Tax System. Both examples represent violations of law and result in missed revenue for the county and decreased program impact. Our testing also showed the benefit of analyzing Bag Tax System data to identify potential non-compliant retailers.

Recommendation 4

We recommend the county actively enforce the carryout bag tax law by implementing proactive strategies, to include educating retailers, conducting spot checks of retail locations, and pursuing fines for those violating the law.

Finding 5: The county should do more to assess the impact of the carryout bag tax.

The carryout bag tax was implemented to transfer some of the burden of litter cleanup costs from taxpayers to consumers, with the hope that it would also change consumer behavior and result in the use of fewer disposable bags. The county has not undertaken a comprehensive effort to regularly assess the tax's impact on the amount of litter in county waterways or consumer behavior. This type of analysis is needed to understand whether the tax is having the desired effect, whether improvements should be made to the administration of the carryout bag tax program to help realize its maximum value, and whether desired goals have been met.

In 2018, CountyStat and University of Maryland graduate students separately conducted evaluations of the carryout bag tax program using data from the Bag Tax System. Generally, the evaluations concluded that there was an initial decrease in carryout bag use when the tax was imposed in 2012 but thereafter, use of disposable bags remained essentially unchanged. This observation is similar to general trends seen in other jurisdictions that imposed a bag tax (e.g., Chicago, IL).

Although repeating such an analysis could theoretically aid in assessing the tax's effectiveness, we note that conclusions drawn from analyses of data from the Bag Tax System as currently maintained will not provide an accurate assessment of the impact of the carryout bag tax. The data is heavily affected by many factors, not the least of which is the county's mild efforts at enforcing the tax, and limited retailer participation. CountyStat also acknowledged limitations in using Bag Tax System data in their May 2018 report.

Efforts to assess the impact of the tax on consumer behavior have produced marginal evidence that does not provide definitive answers about the tax's effectiveness. In 2019, DEP contracted with research organization Eurekafacts to survey residents and businesses to determine the impact and level of support for the carryout bag tax program. They reported that 67% of the 735 respondents stated that the law caused them to decrease the number of bags they used. Also in 2019, the Montgomery County Sierra Club conducted their own survey of shoppers. The group counted the number of disposable bags they observed leaving 57 county grocery stores in one hour. They reported an increase from the number of disposable bags counted during a

similar effort in 2014 and posited that the increase was possibly attributable to the rise of grocery pick-up and delivery services. These isolated attempts fail to provide reliable data that could inform the county's administration of the carryout bag tax program.

The county has also faltered in assessing the impact of the tax on litter. Although DEP regularly collects data on the amount of plastic bags found in county waterways and trash, the effort and resulting data is not specific to bags subject to the carryout bag tax program. For instance, DEP's data includes bags and other refuse that could have entered the waterways from other jurisdictions. The lack of data leaves questions about whether the tax is meeting its goal of reducing plastic bag litter.

These disparate activities, either individually or collectively, do not yield information that allows the county to draw conclusions about the effectiveness of the carryout bag tax. Without consistent metrics and comprehensive analysis, it is difficult to determine the program's impact. Future assessments should be conducted and designed to measure the same data points in a consistent manner and at regular intervals in order to target the specific intent of the program.

Recommendation 5

We recommend the county implement routine assessments to measure the impact of the carryout bag tax on consumer behavior and litter in area waterways.

The CAO's response to our report is included in its entirety in Appendix A. The response notes general concurrence with the OIG's recommendations but does not provide specific corrective actions or plans for remediating the county's poor enforcement and administration of the carryout bag tax.

Contrary to the CAO's assertion, the legislative history is clear that "rais[ing] revenue"⁸ was an intended goal of enacting the bill. The Legislative Request Report for the bill states in the goals and objectives section that the tax would "effectively transfer the burden of litter cleanup costs from taxpayers to consumers". The Office of Management and Budget's fiscal impact statement and County Executive Leggett's request to introduce the carryout bag tax bill emphasize that "revenue would be deposited in the County's Water Quality Protection Fund". The lackadaisical enforcement of the tax means the government is missing opportunities to "transfer the burden" of litter cleanup costs paid by tax payers, which have increased \$21 since FY20.

Furthermore, the stated Department of Environmental Protection (DEP) belief that the law "has both increased consumer awareness and reduced the use of disposable bags" is unsupported by evidence. As we note in the report, the county has not undertaken a comprehensive effort to regularly assess the amount of litter in county waterways or consumer behavior. Without such studies, it is impossible to know the true impact of the law. In fact, the bag tax collection data shows an increase in the number of bags purchased from FY18 to FY22.

We are encouraged by the CAO's stated interest in reassessing the current enforcement of the carryout bag tax. We urge the administration to act quickly, so those retailers not paying the required tax and those not remitting collected taxes are held accountable.

⁸ April 4, 2011, Memorandum from Michael Faden, Subject Worksession: Bill 8-11, Taxation-Excise Tax – Disposable Carryout Bags.

The Chief Administrative Officer provided the following response to our report:



OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

Richard S. Madaleno
Chief Administrative Officer

MEMORANDUM

June 6, 2023

TO: Megan Davey Limarzi, Inspector General

FROM: Richard S. Madaleno, Chief Administrative Officer *RSM*

SUBJECT: Inspector General Confidential Draft Report: Carryout Bag Tax (OIG Publication #OIG-23-XX)

Thank you for the opportunity to respond to the issues identified in the report. One of the purposes of Bill 8-11 (carryout bag tax) was to increase awareness about protecting the environment and create an incentive for consumers and retailers to use fewer disposable bags, without creating an undue burden on small businesses in meeting the requirements of the law. The law's underlying purpose was not to generate additional revenue to temper required increases to the Water Quality Protection Charge.

The Department of Environmental Protection (DEP) believes that generally the law has both increased consumer awareness and reduced the use of disposable bags, but additional efforts to strengthen enforcement of the law's requirements may be required. DEP has noted, and your draft report confirms, an increase in carryout bag tax revenues during the two fiscal years (FY 2021 and 2022) when the pandemic was at its peak. We will continue to monitor this trend to assess whether it continues into the future. DEP also advised that in April they created and filled a position to enforce the carryout bag tax; this position will better enable DEP to monitor and promote compliance with the carryout bag tax law requirements.

We believe that caution should be exercised concerning some of the retailer and potential tax revenue numbers reflected in the report, since these are speculative and may overstate the actual numbers. While the Maryland Department of Labor data mentioned in the report is a promising starting point to compare to the list of retailers registered in the County Bag Tax System, additional analyses will need to be performed to develop a more refined understanding of the number of retailers not currently paying the carryout bag tax and the additional tax revenue that could be collected with enhanced enforcement efforts.

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The report noted the following recommendations.

Recommendation 1: We recommend the County:

- a) Establish and document a process to continually identify all retailers who are required to remit carryout bag tax.
- b) Proactively pursue retailers who they have identified as being subject to complying with the carryout bag tax to ensure they are educated on the requirements of the tax and charging and remitting appropriate taxes.

CAO Response: We concur. I have directed DEP to assess the current method used to identify and maintain a list of retailers required to remit carryout bag taxes under the law and to implement appropriate improvements in the current process. With the establishment and filling of a position dedicated to enforcement of the carryout bag tax law requirements, DEP has assured me that they will be better able to educate retailers on the requirements of the law and enforce the law's requirements.

Recommendation 2: We recommend the County:

- a) Require retailers remitting for multiple locations to identify by name and address each location they are filing for and the associated number of bags and amounts collected.
- b) Enforce the statutory requirements that each remittance must be accompanied by a report of all transactions that involve bags subject to the tax.

CAO Response: We concur with the intent of the recommendation and will explore the feasibility and options for collecting such information. Any such change would likely require either modifications to the existing functionality of the current system, which currently allows collection of only one retailer number, or a more manually-intensive review and reconciliation process. In either case, additional analyses of available options and associated resources will be required

Recommendation 3: We recommend the County pursue legislative changes to remove the \$100 remittance threshold or administratively modify the requirement to remit payment on a defined basis.

CAO Response: I have directed DEP, in coordination with the Department of Finance, to assess the current carryout bag tax law and identify any required revisions to the law and/or associated administrative processes that should be pursued.

Recommendation 4: We recommend the County actively enforce the carryout bag tax law by implementing proactive strategies, to include educating retailers, conducting spot checks of retail locations, and pursuing fines for those violating the law.

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CAO Response: We agree that the current enforcement program for the carryout bag tax law needs to be reassessed. I have directed DEP to develop and implement an enhanced education and enforcement program for the law.

Recommendation 5: We recommend the County implement routine assessments to measure the impact of the carryout bag tax on consumer behavior and litter in area waterways.

CAO Response: We concur in concept with the recommendation. Measuring the amount of litter in county waterways is challenging and potentially costly. Plastic bags can be brought in from outside the County and trash in the waterways cannot be directly tied to trash produced within the County. However, DEP will explore the possibility of some options to assess and measure the impact of the bag tax on consumer behavior and litter in area waterways.

Thank you for bringing these matters to our attention.

cc: Fariba Kassiri, Deputy Chief Administrative Officer, Office of the County Executive
Willie Wainer, Acting Director, Department of Environmental Protection
Michael Coveyou, Director, Department of Finance
Bill Broglie, Internal Audit Manager, Office of the County Executive