Agenda Item 1
December 26, 2017
Introduction, Public Hearing, & Action

MEMORANDUM

December 23, 2017

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: **Introduction, Public Hearing, and Action:** Expedited Bill 42-17, Property Tax – Advance Payment – Authorized

Expedited Bill 42-17, Property Tax – Advance Payment – Authorized, sponsored by Lead Sponsor Council President Riemer, is scheduled to be introduced on December 26, 2017. A public hearing is tentatively scheduled for December 26, 2017 at 10:00 am with action tentatively scheduled immediately after the public hearing. Council President Riemer explained the reason for the expedited action on this Bill at ©4.

Background

Bill 42-17 would authorize the advance payment of County property tax. MD Code, Tax - Property, § 10-205 authorizes the governing body of a County to enact a law permitting taxpayers to make an advance payment of County property tax. Section 10-205(b) of this enabling act requires the advance payment to be "calculated by applying the current county property tax rate to the assessment of the taxpayer's property for the prior year." Bill 42-17 would require the County to refund any amount paid that is greater than the property tax owed and would permit the County to bill the property owner for any amount of the advance payment that is less than the real property tax finally determined.

Issues

1. What is the fiscal impact of this Bill?

OMB and Finance did not have time to prepare a fiscal and economic impact statement. The President signed a Tax Reform Act into law on December 22, 2017 that would limit the deduction for State and local income, sales, and property tax to $10,000 beginning in 2018. Therefore, the advance payment of 2018 property tax before the end of 2017 **may** be deductible for some taxpayers on their 2017 income tax. To the extent that this is deductible for a County taxpayer, the taxpayer would reduce his or her taxable income. A reduction in Federal taxable income would result in a reduction in State and local income tax owed. It is unknown how many taxpayers would take advantage of this advance payment,[1] and therefore, the ultimate loss of County income tax revenue is unknown now. Although the County would receive additional

[1] As discussed below, it is unclear if an advance payment in 2017 would be deductible on at taxpayer's 2017 return.

property tax revenue in 2017, this would be matched by a reduction in property tax revenue received in 2018.

2. Would an advance payment of FY2019 property tax made in 2017 be deductible on a taxpayer's Federal 2017 tax return?

Council staff cannot answer this question. The Federal Tax Reform Act that was signed into law on December 22, 2017 was not widely distributed to the public and has not yet been interpreted by the Internal Revenue Service. It is likely that some taxpayers who make an advance payment of property tax will not be able to claim a deduction on their Federal 2017 tax return. For example, a taxpayer who is subject to the Alternative Minimum Tax (AMT) in 2017 is likely to lose the property tax deduction. It is also unclear if the Internal Revenue Service would permit a deduction of 2018 property tax paid in 2017 before the tax was levied by the County. A taxpayer who makes an advance payment of 2018 property tax in 2017 would be taking a risk that the deduction would not be permitted on the taxpayer's 2017 tax return.

3. What is being done in other jurisdictions?

Council staff has not had time to survey other jurisdictions. However, Howard County, Maryland, Fairfax County, Virginia, and the District of Columbia (DC) permit an advance payment of property tax. However, these jurisdictions had permitted this prior to this year and already have a system set up to handle these payments. DC Mayor Muriel Bowser recently announced that DC residents can prepay property taxes for 2018. However, DC is on a different fiscal cycle than Montgomery County. In DC, assessments and rates have already been set for 2018, though the first installment payments are not due until the end of March 2018. This is different from the situation in Montgomery County, in which assessments and rates have not been finalized, and therefore property tax bills have not been generated. Montgomery County taxpayers, in contrast, receive bills in July and make installment payments in September and December. Yesterday, Gov. Andrew M. Cuomo of New York signed an executive order suspending provisions in state law that might have blocked some residents from prepaying next year's property taxes.[2]

4. Are there implementation problems?

a. Whatever system Finance implements would need to be developed before January 1, during the holidays, and during the time when second installments on property taxes are due. This would place pressure on limited resources in the Finance Department.

b. Errors and confusion may occur. Finance would be creating a new process with very little preparation. There may be complaints from people who write advance payment checks and then do not see the advance payment reflected in the online system. There may be complaints from people if Congress takes any future actions to eliminate the advance payment loophole. There may be complaints from people who are having difficulty with their mortgage servicers regarding escrow accounts. There also may be complaints from taxpayers who learn about the program too late.

[2] See the New York Times article at: https://www.nytimes.com/2017/12/22/nyregion/cuomo-assist-as-homeowners-rush-to-prepay-property-tax-bill.html

c. We do not have enough time to give taxpayers reasonable notice of this opportunity.

4. Should the Bill include a sunset provision?

Congress and the President made the advance payment of County property tax relevant for this year only. Absent a change in the Federal tax law, the cap on the deduction of State and local income and property tax will continue in the future. In future years, the advance payment of County property tax is unlikely to be valuable to many taxpayers. If the law sunsets, Finance will not have to set up a permanent system for handling advance payments. The Bill would does not include a sunset provision. The Council may want to consider if the advance payment of County property tax should be permitted for this year only. If so, the Bill should be amended to include a sunset provision.

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Expedited Bill No. 42-17
Concerning: Real Property Tax – Advance Payment - Authorized
Revised: December 23, 2017 Draft No. 3
Introduced: December 26, 2017
Expires: June 26, 2019
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. [#], Laws of Mont. Co. [year]

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President Riemer

AN EXPEDITED ACT to:

(1) authorize the advance payment of real property tax;
(2) establish the method of calculating an advance payment of real property tax;
(3) authorize the Director of Finance to bill for underpayments and refund overpayments; and
(4) generally amend the law governing real property payments.

By adding
Montgomery County Code
Chapter 52, Taxation
Section 52-2A

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 52-2A is added as follows:

52-2A. Advance payment of real property tax.

(a) *Payment Authorized.* A property owner may make advance payment of County real property tax in accordance with the provisions of MD Code, Tax - Property, § 10-205, as amended.

(b) *Calculation of Payment.* The advance payment must be calculated by applying the current County property tax rate to the assessment of the property owner's real property for the prior year.

(c) *Billing.* If the advance payment is less than the County real property tax as finally determined, the Director of Finance must send a bill to the property owner for the difference.

(d) *Overpayment.* If the real property tax paid under this section is more than the real property tax finally determined, the Director of Finance must send a refund to the property owner.

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on December 26, 2017. The amendments in Section 1 apply to advance payments made on or after December 26, 2017.

Approved:

Hans D. Riemer, President, County Council Date

Approved:

Isiah Leggett, County Executive Date

LEGISLATIVE REQUEST REPORT

Bill 42-17
Expedited Bill 42-17, Property Tax – Advance Payment – Authorized

DESCRIPTION: Bill 42-17 would authorize a taxpayer to make an advance payment of County property tax in 2017.

PROBLEM: The Federal Tax Reform Act signed into law by the President on December 22, 2017 will limit the deduction of State and local income, sales, and property tax to a total of $10,000. County law does not permit the advance payment of County property tax.

GOALS AND OBJECTIVES: The goal is to permit County taxpayers to make an advance payment of 2018 property tax in 2017. This may permit some taxpayers to deduct these advance payments on their 2017 tax return.

COORDINATION: Department of Finance, County Attorney

FISCAL IMPACT: Office of Management and Budget

ECONOMIC IMPACT: Department of Finance

EVALUATION: n/a

EXPERIENCE ELSEWHERE: Howard County permits advance payments of property tax.

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: n/a

PENALTIES: n/a

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MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

HANS RIEMER
COUNCIL PRESIDENT

Statement by Council President Hans Riemer
December 23, 2017

The Montgomery County Council will meet at 10:00 a.m. on Tuesday, December 26 to consider Expedited Bill 42-17. The bill would enable County residents to prepay their 2018 property taxes before the end of 2017. Following a public hearing, the Council will take action on the bill.

This bill is a response to the just-enacted federal tax reform act. One of the act's many problematic features is to limit the deductibility of state and local taxes on federal returns to $10,000 starting in 2018. While some other jurisdictions permit prepayment of property taxes, current Montgomery County law does not.

Earlier this week the Council concluded that the prepayment option raised many serious questions. Tax advisors are divided on whether prepayments would actually be deductible in 2017. The Finance Department would have to create a new process for handling prepayments. Errors, confusion, and complaints could well occur. The fiscal impact has not been established. Notice is very short. Other jurisdictions in the region and the nation are confronted with the same questions.

Nevertheless, we must act. This problem was created by the federal government's reckless tax bill. These are not ordinary times. Like other jurisdictions, we must do what we can to ease the burden on our residents. Only they can determine whether prepayment is the right decision for them, but we should ensure that they have the opportunity to make that decision.

The County Council will accept testimony at the public hearing. Please email councilmember.riemer@montgomerycountymd.gov if you would like to testify in person. The deadline to submit a request to testify is Dec. 26 at 7 a.m. Sending a request to testify does not guarantee your spot on the Council's speakers list. Speakers for the public hearing will receive email confirmation notifications by 9 a.m. on Dec. 26.

The Council will also accept written testimony. Please email written testimony to county.council@montgomerycountymd.gov.