

Resolution No.: 17-484
Introduced: July 10, 2012
Adopted: July 10, 2012

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: Repeal of Department of Finance Regulation 12-10, Excise Tax: Major Emitters of Carbon Dioxide

Background

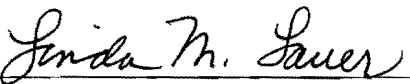
1. On June 18, 2012, the Council received a request to repeal Department of Finance Regulation 12-10, Excise Tax: Major Emitters of Carbon Dioxide, which was originally adopted under Method 2 of Section 2A-15 of the Montgomery County Code. Section 2A-15 requires that to repeal an adopted regulation, an issuer must use the procedure under which the regulation was adopted.
2. Bill 21-10 added to the laws of Montgomery County a tax on major emitters of carbon dioxide. The Bill also directed that regulations be issued consistent with the new law. Executive Regulation 12-10 was issued, adopted by Council Resolution 16-1550.
3. Mirant Mid-Atlantic LLC, now known as Genon Mid-Atlantic LLC, the only entity within the County subject to the new tax, challenged the law. The Court found that the tax was not a "tax", but a "fee". As a result of the Court's decision, the County Council repealed the law by Bill 24-11.
4. The Executive requests repeal of Regulation 12-10 because it is obsolete.

Action

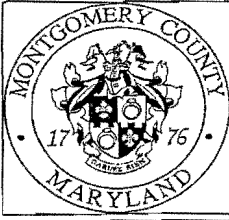
The County Council for Montgomery County, Maryland approves the following resolution:

Department of Finance Regulation 12-10, Excise Tax: Major Emitters of Carbon Dioxide, is repealed.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Excise Tax: Major Emitters of Carbon Dioxide	Number 12-10
Originating Department Department of Finance	Effective Date

Montgomery County Regulation on

REPEAL OF EXECUTIVE REGULATION 12-10,
EXCISE TAX: MAJOR EMITTERS OF CARBON DIOXIDE

Issued by: County Executive
Regulation No. 12-10

Repeals: Executive Regulation 12-10
Council Review: Method (2) under Code Section 2A-15

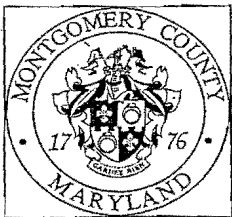
Register Vol. 29 Issue. 5
Effective Date: _____
Comment Deadline: _____

Summary: Bill 21-10 added to the laws of Montgomery County a tax on major emitters of carbon dioxide. The Bill also directed that regulations be issued consistent with the new law. Mirant Mid-Atlantic LLC, now known as Genon Mid-Atlantic LLC, the only entity within the County subject to the new tax, challenged the law. The Court found that the tax was not a "tax", but a "fee". As a result of the Court's decision, the County repealed the law by Bill 24-11.

Staff contact: Robert Hagedoorn
(240) 777-8887

Address: Department of Finance
Division of Treasury
255 Rockville Pike
Rockville, Maryland 20850

Background: Chapter 52, Article XIII, Excise Tax on Major Emitters of Carbon Dioxide, which provided for Executive Regulations implementing the excise tax, was repealed by Bill 24-11, making the Executive Regulations obsolete.



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Subject Excise Tax: Major Emitters of Carbon Dioxide	Number 12-10
Originating Department Department of Finance	Effective Date

[Sec. 1. Regulation

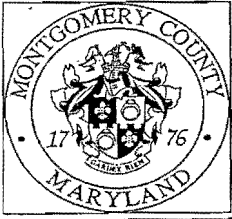
Section I: General Provisions

- A. Authority. In accordance with the authority conferred under Chapter 52, Article XIII, and Section 2A-15(j) of the Montgomery County Code, 2004, the County Executive promulgates this regulation to implement the excise tax on major emitters of carbon dioxide in Montgomery County, Maryland.
- B. Applicability. This excise tax on carbon dioxide emissions is levied on any person who owns or operated any stationary source of carbon dioxide located in the County that emits more than 1 million tons of carbon dioxide in any calendar year.

Section II. Definitions

For purposes of this regulation, the following words and phrases have the following meaning unless the context clearly indicates otherwise:

- A. Calendar year – means a year that applies to the period January 1 through December 31, except for 2010. In 2010, calendar year means June 1, 2010, through December 31, 2010.
- B. Department – means the Department of Finance.
- C. Director – means the Director of Finance.
- D. Emission report – means the tax return form provided by the Director that must be filed with the County by a major emitter, to report carbon dioxide emissions for the previous month and to remit taxes due under Section 52-96.
- E. Major emitter – means any person who owns or operates any stationary source of carbon dioxide located in Montgomery County that emits more than 1 million tons of carbon dioxide in a calendar year.
- F. Person – includes any individual, business, corporation, association, firm, partnership, group of individuals acting as a unit, trustee, receiver, assignee, or personal representative.



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- G. Ton -- means a measurement that, when applied to carbon dioxide in gaseous form, means the amount of gas in cubic feet that is the equivalent of 2000 pounds on a molecular weight basis.

Section III. Obligation to File Emission Report

- A. Each major emitter must obtain an emission report and tax account number from the Director.
- B. Each major emitter must file with the Director an emission report not later than the last day of the month following the month during which the major emitter has emitted 1 million tons of carbon dioxide during the calendar year. The emission report must report emissions on a monthly basis during each calendar year.
- C. After a major emitter has filed the first emission report during a calendar year, the major emitter must file an emission report covering each remaining month in the calendar year, not later than the last day of the following month.
- D. Example: If a person emits 300,000 tons of carbon dioxide in January; 300,000 tons of carbon dioxide in February; 300,000 tons of carbon dioxide in March; and 300,000 tons of carbon dioxide in April, the person has emitted more than 1 million tons of carbon dioxide during a calendar year and has, therefore, become a major emitter. The person must file an emission report not later than the last day of May in that calendar year.

Section IV. Calculation and Payment of Tax

- A. The excise tax on a major emitter of carbon dioxide is due not later than the last day of the month following the month during which the major emitter has emitted 1 million tons or more of carbon dioxide in a calendar year. The major emitter must pay the tax due on each ton of carbon dioxide emitted during the calendar year through the end of the month covered by the emission report.
- B. After a major emitter has emitted more than 1 million tons of carbon dioxide in a calendar year, the major emitter must pay the tax due on a monthly basis, not later than the last day of the following month.
- C. The tax rate is \$5 per ton of carbon dioxide or an amount set by the Montgomery County Council under Section 52-96(d).



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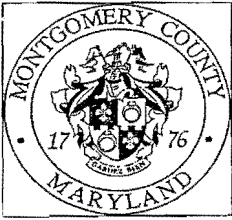
- D. The tax must be paid to the Director with the emission report reporting the carbon dioxide emission associated with the tax payment.
- E. Example: If a person emits 300,000 tons of carbon dioxide in January; 300,000 tons of carbon dioxide in February; 300,000 tons of carbon dioxide in March; and 300,000 tons of carbon dioxide in April, the person must pay to the Director an excise tax of \$6 million (1.2 million tons x \$5), along with an emission report not later than the last day of May in the same calendar year. If the major emitter emits 500,000 tons of carbon dioxide during May, the major emitter must pay to the Director an excise tax of \$2.5 million (500,000 tons x \$5) not later than the last day of June.

Section V. Adjusted and Estimated Tax; Audit; Records

- A. If a major emitter fails to file an emission report or pay the tax by the due date, the Director may send the major emitter an estimated tax bill. The estimated tax may be based on the previous month's reported emissions or on some other reasonable source of information, including information reported to the United States Environmental Protection Agency's Continuous Monitoring System. A person must pay the estimated tax within 10 days of the date of the notice from the Director.
- B. The Director may adjust an emission report and the tax due based on an audit of the records of the major emitter or information obtained from a federal or state air pollution control agency, including information from the United States Environmental Protection Agency's Continuous Monitoring System. The major emitter must pay the adjusted tax within 10 days of the notice of the adjusted tax from the Director.
- C. Each major emitter must preserve records necessary to determine and verify the amount of the tax for 3 years. The Director may inspect and audit the records at any reasonable time.

Section VI. Interest and Penalty; Tax Lien

- A. If a major emitter fails to pay the tax when it is due, the major emitter is liable for interest on the unpaid tax at the rate of 1% per month for each month, or a part of a month, after the tax is due, plus a penalty on the unpaid tax of 5% per month, or part of the month, after the tax is due. The penalty must not exceed 25% of the tax due.



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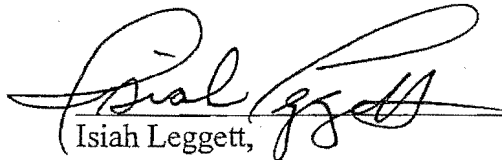
- B. If a major emitter fails to pay the tax when it is due, the tax and any interest and penalties are a lien in favor of the County on all property, real or personal, and all rights to the property that belongs to the major emitter under Montgomery County Code, Section 52-18D.

Sec. 2. Severability

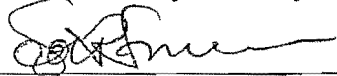
If a court holds that a portion of this regulation is invalid, the other portions remain in effect.

Sec. 3. Effective Date

This regulation takes effect upon approval by the County Council.]


Isiah Leggett,
County Executive

Approved as to Form and Legality
Office of the County Attorney

By: 
Date: 6-6-2012