


MEMORANDUM

December 2, 2016

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Introduction:** 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, is scheduled to be introduced on December 6, 2016. A public hearing is tentatively scheduled for January 17, 2017 at 1:30 p.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 offset² 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.

This packet contains:

Bill 48-16

Legislative Request Report

Circle #

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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

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

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:

Nancy Floreen, 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