

Expedited Bill No. 19-10
Concerning: Taxes – Transportation
Impact Tax - Amendments
Revised: 10-12-10 Draft No. 8
Introduced: April 20, 2010
Enacted: October 12, 2010
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) modify the credits which apply to the transportation impact tax;
- (2) codify, and specify the terms of, the transportation mitigation payment referred to in the County Growth Policy; and
- (3) generally amend County law regarding impact taxes.

By amending

Montgomery County Code
Chapter 52, Taxation
Sections 52-47, 52-54, 52-55, and 52-59

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:

29 *Social service provider*[:] means a locally-based, federally tax-exempt
 30 nonprofit direct provider of social services whose primary service area is
 31 Montgomery County.

32 **52-54. Refunds.**

33 (a) Any person who has paid a development impact tax may apply for a
 34 refund of the impact tax if:

35 (1) the County has not appropriated the funds for impact
 36 transportation improvements of the types listed in Section 52-
 37 58, or otherwise formally designated a specific improvement of
 38 a type listed in Section 52-58 to receive funds, by the end of the
 39 sixth fiscal year after the tax is collected;

40 (2) the building permit has been revoked or has lapsed because
 41 construction did not start; or

42 (3) the project has been physically altered, resulting in a decrease
 43 in the amount of impact tax due.

44 (b) Only the current owner of property may petition for a refund of the
 45 impact tax. A petition for refund of the impact tax must be filed
 46 within the time established for filing a claim for refund of a local tax
 47 under state law.

48 (c) The petition for refund of the impact tax must be submitted to the
 49 Director of Permitting Services on a form provided by the County.
 50 The petition must contain at least:

51 (1) a statement that petitioner is the current owner of the property;

52 (2) a copy of the dated receipt for payment of the development
 53 impact tax issued by the Department of Permitting Services;

54 (3) a certified copy of the latest recorded deed for the subject
 55 property; and

- 56 (4) the reasons why a refund of the impact tax is sought.
- 57 (d) The Director of Permitting Services must investigate each claim and
 58 hold a hearing [at the request of] if the petitioner requests a hearing.
 59 Within 3 months after receiving a petition for refund of the impact
 60 tax, the Director of Permitting Services must provide the petitioner, in
 61 writing, with a decision on the impact tax refund request. The
 62 decision must include the reasons for the [decisions] decision,
 63 including, as appropriate, a determination of whether impact tax funds
 64 collected from the petitioner, calculated on a first-in-first-out basis,
 65 have been appropriated or otherwise formally designated for impact
 66 transportation improvements of the types listed in Section 52-58
 67 within [six] 6 fiscal years. If a refund of the impact tax is due the
 68 petitioner, the Director of Permitting Services must notify the
 69 Department of Finance and, if the property is located in Gaithersburg
 70 or Rockville, the finance director of that city.
- 71 (e) The Department of Finance must not pay a refund of the impact tax
 72 unless the petitioner has paid all other state, county, or municipal
 73 taxes, fees, or charges that the Department is responsible for
 74 collecting.
- 75 (f) The petitioner may appeal the determination of the Director of
 76 Permitting Services in accordance with Article 24, Title 9, of the
 77 Maryland Code or any successor law.

78 **52-55. Credits.**

- 79 (a) ~~[(1)]~~ (1) A property owner is entitled to a credit if the owner, before
 80 July 1, 2002, entered into a participation agreement, or a similar
 81 agreement with the state or a municipality, the purpose of
 82 which was to provide additional transportation capacity. A

83 property owner is also entitled to a credit if the owner receives
 84 approval before July 1, 2002, of a subdivision plan,
 85 development plan, or similar development approval by the
 86 County or a municipality that requires the owner to build or
 87 contribute to a transportation improvement that provides
 88 additional transportation capacity. The Department of
 89 Transportation must calculate the credit. The credit must equal
 90 the amount of any charge paid under the participation
 91 agreement. The Department may give credit only for building
 92 permit applications for development on the site covered by the
 93 participation agreement. [The Department must not give a
 94 refund for a credit earned under this subsection.]

95 [(2) Any credit that was certified under this subsection before
 96 February 1, 2010, expires on February 1, 2016.

97 (3) Any credit that is certified under this subsection after February
 98 1, 2010, expires 6 years after the Department of Transportation
 99 certifies the credit.]]

100 (2) Any credit that was certified before July 1, 2002, for an entity
 101 that received more than \$20 million in credits under this
 102 subsection may be applied to satisfy up to \$2 million worth of
 103 obligations under Policy Area Mobility Review or any
 104 successor policy area transportation test, in addition to impact
 105 taxes,. This paragraph is not effective after October 31, 2015.

106 (b) A property owner must receive a credit for constructing or
 107 contributing to an improvement of the type listed in Section 52-58 if
 108 the improvement reduces traffic demand or provides additional
 109 transportation capacity. However, the Department must not certify a

110 credit for any improvement ~~[[to or other action limited to]]~~ in the
111 right-of-way of a State road, except a transit or trip reduction program
112 that operates on or relieves traffic on a State road or an improvement
113 to a State road that is included in a memorandum of understanding
114 between the County and either Rockville or Gaithersburg.

115 (1) If the property owner elects to make the improvement, the
116 owner must enter into an agreement with a municipality or the
117 County, or receive a development approval based on making
118 the improvement, before any building permit is issued. The
119 agreement or development approval must contain:

- 120 (A) the estimated cost of the improvement, if known then[,] ;
121 (B) the dates or triggering actions to start and, if known then,
122 finish the improvement[,] ;
123 (C) a requirement that the property owner complete the
124 improvement according to applicable municipal or
125 County standards[,] ; and
126 (D) ~~[[such]]~~ any other ~~[[terms and conditions as]]~~ term or
127 condition that the municipality or County finds
128 necessary.

129 (2) The Department of Transportation must:

- 130 (A) review the improvement plan[,] ;
131 (B) verify costs and time schedules[,] ;
132 (C) determine whether the improvement is an impact
133 transportation improvement[,] ;
134 (D) determine the amount of the credit for the improvement
135 that will apply to the development impact tax[,] ; and

- 136 (E) certify the amount of the credit to the Department of
137 Permitting Services before that Department or a
138 municipality issues any building permit.
- 139 (3) An applicant for subdivision, site plan, or other development
140 approval from the County, Gaithersburg, or Rockville, or the
141 owner of property subject to an approved subdivision plan,
142 development plan, or similar development approval, may seek a
143 declaration of allowable credits from the Department of
144 Transportation. The Department must decide, within 30 days
145 after receiving all necessary materials from the applicant,
146 whether any transportation improvement which the applicant
147 has constructed, contributed to, or intends to construct or
148 contribute to, will receive a credit under this subsection. If,
149 during the initial 30-day period after receiving all necessary
150 materials, the Department notifies the applicant that it needs
151 more time to review the proposed improvement, the
152 Department may defer its decision an additional 15 days. If the
153 Department indicates under this paragraph that a specific
154 improvement is eligible to receive a credit, the Department
155 must allow a credit for that improvement when taking action
156 under paragraph (2).
- 157 [(4) The County must not provide a refund for a credit which is
158 greater than the applicable tax.]
- 159 [(5)] (4) ~~[(A)]~~ Any credit [issued] that was certified under this
160 subsection on or after March 1, 2004, expires 6 years
161 after the Department certifies the credit.

162 [(B) Any credit that was certified under this subsection before
163 March 1, 2004, expires on February 1, 2016.]]

164 (5) The property owner must notify the Department of
165 Transportation of the actual cost of each improvement for
166 which a credit was certified within [[90]] 180 days after the
167 improvement is completed. [[Each eligible cost must be
168 expressly authorized in an applicable regulation.]] Any cost of
169 dedicating land or another right-of-way is not eligible unless the
170 owner shows that the improvement resulted in a loss of density
171 for the development.

172 (6) If the actual cost of an improvement for which a credit was
173 certified differs from its estimated cost:

174 (A) if the actual cost is greater than the estimate, the amount
175 of the credit must be increased to cover the actual cost of
176 the improvement;

177 (B) if the actual cost is less than the estimate:
178 (i) the amount of any credit that has not been used
179 must be reduced by the difference between the
180 estimate and the actual cost; and
181 (ii) if any impact tax on the development is owed, the
182 property owner must pay the additional tax.

183 [(c). A property owner may apply to the Director of Permitting Services for
184 a credit for the amount of the development impact tax previously paid
185 if:

186 (1) the project has been altered, resulting in a decrease in the
187 amount of the tax due; or

188 (2) the building permit lapses because of noncommencement of
189 construction.]]

190 [(d) Reserved.]

191 [(e)] ~~[(d)]~~ (c) Any property owner who, before May 1, 2001, built all or
192 part of a project in the Clarksburg ~~[[planning]]~~ policy area which is
193 listed in the impact tax transportation program (including building any
194 road which would be widened under the program) is entitled to a
195 credit equal to the reasonable cost of the improvement. The
196 Department of Transportation must calculate the credit. [The
197 Department must not give a refund for a credit earned under this
198 subsection.]

199 [(f)] ~~[(e)]~~ A property owner may transfer a credit against the development
200 impact tax to another property owner if the transferor received the
201 credit on or before August 7, 1992, in exchange for the sale of land to
202 the County. The transferee is entitled to the amount of credit
203 transferred to it, up to the amount of unpaid impact tax the transferee
204 owes. [The Department must not give a refund for a credit used under
205 this subsection.] The Department must not allow more than
206 \$2,750,000 in credits under this [subdivision] subsection.]]

207 [(g)] ~~[(f)]~~ (d) Any [credits] credit for building or contributing to an impact
208 transportation improvement [do] does not apply to any development
209 that is approved under the Alternative Review Procedure for Metro
210 Station Policy Areas in the County ~~[[Growth]]~~ Subdivision Staging
211 Policy.

212 ~~[(g)]~~ (e) A refund must not be granted ~~[[for]]~~ when any credit certified
213 under this Section exceeds the applicable tax.

214 ~~[(h)]~~ (f) (1) If an improvement has not been completed and the impact tax
 215 credit is based on an estimated cost, the property owner must
 216 post a surety bond or similar instrument ~~[[based on]]~~ for the
 217 estimated cost of the improvement unless the owner has already
 218 filed a bond in at least that amount with the County for the
 219 same improvement.

220 (2) If the property owner does not construct or complete the
 221 improvement for which a credit has been issued, the County
 222 may use the bond as necessary to construct or complete the
 223 improvement.

224 (3) The Department may revoke a credit when the property owner
 225 does not build the improvement for which a credit was certified.

226 ~~[(i)]~~ (g) Any credit certified for an improvement located in a municipality
 227 must be applied to impact tax payable on development in the same
 228 municipality.

229 ~~[(j)]~~ (h) Any road or other transportation improvement that ~~[[is local or~~
 230 internal to a development]] primarily serves the residents or occupants
 231 of one development or a small number of developments is not eligible
 232 for a credit under this Section.

233 ~~[(k)]~~ (i) Any contribution to a transportation improvement must be to a
 234 specific project that is fully funded in the County capital improvement
 235 program or the similar program of a municipality to be eligible for a
 236 credit under this Section, except a credit issued under subsection (a).

237 (j) After a credit has been certified under this Section, the property owner
 238 or contract purchaser to whom the credit was certified may transfer all
 239 or part of the credit to any successor in interest of the same property.
 240 However, any credit transferred under this subsection must only be

241 applied to the tax due under this Article with respect to the property
 242 for which the credit was originally certified.

243 **52-59. [Reserved] Transportation Mitigation Payment.**

244 (a) In addition to the tax due under this Article, an applicant for a
 245 building permit for any building on which an impact tax is imposed
 246 under this Article must pay to the Department of Finance a
 247 Transportation Mitigation Payment if that building was included in a
 248 preliminary plan of subdivision that was approved under the
 249 Transportation Mitigation Payment provisions in the County
 250 [[Growth]] Subdivision Staging Policy.

251 (b) The amount of the Payment for each building must be calculated by
 252 multiplying the Payment rate by the total peak [[period]] hour trips
 253 generated by the development.

254 (c) The Payment rate is \$[[11,000]] 11,300 per peak [[period]] hour trip,
 255 unless modified by Council resolution. The Planning Board must
 256 adjust the then-applicable Payment rate as of July 1 of each year by
 257 the annual average increase or decrease in a published construction
 258 cost index specified by the Board for the most recent calendar year.
 259 The Board must adjust the rate to the nearest multiple of \$10. The
 260 Council by resolution, after a public hearing advertised at least 15
 261 days in advance, may increase or decrease the Payment rate or set
 262 different rates for different types of development.

263 (d) The Payment must be paid at the same time and in the same manner as
 264 the tax under this Article, and is subject to all provisions of this
 265 Article for administering and collecting the tax.

266 (e) The Department of Finance must retain funds collected under this
 267 Section in an account to be appropriated for transportation

268 improvements that result in added transportation capacity in the area
269 where the development for which the funds were paid is located.

270 **Sec. 2. Expedited Effective Date.**

271 The Council declares that this legislation is necessary for the immediate
272 protection of the public interest. This Act takes effect on the date when it becomes
273 law.

274 *Approved:*

275

276 *Nancy Floreen* 10/13/10
277 Nancy Floreen, President, County Council Date

278 *Approved:*

279

280

281 Isiah Leggett, County Executive Date

282 *This is a correct copy of Council action.*

283

284

285 Linda M. Lauer, Clerk of the Council Date