Bill No. 8-11
Concerning: Taxation - Excise Tax - Disposable Carryout Bags
Revised: 4-12-11 Draft No. 2
Introduced: March 15, 2011
Enacted: May 3, 2011
Executive: May 11, 2011
Effective: January 1, 2012
Sunset Date: None
Ch. 6, Laws of Mont. Co. 2011

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:
(1) impose an excise tax on certain carryout bags provided to customers at certain retail establishments;
(2) require certain retail establishments to collect the carryout bag tax and remit the tax to the County;
(3) authorize payment of a fee to compensate certain retail establishments for collecting the carryout bag tax;
(4) allow certain exemptions from the carryout bag tax;
(5) authorize imposition of an estimated carryout bag tax under certain circumstances;
(6) authorize the imposition of interest and penalties for failure to collect and remit the carryout bag tax; and
(7) generally amend County law to provide for an excise tax on certain bags.

By adding
Montgomery County Code
Chapter 52, Taxation
Article XIV, Carryout Bag Tax
[[Sections 52-101, 52-102, 52-103, 52-104, 52-105, 52-106, and 52-107]]
Sec. 1. Article XIV is added to Chapter 52 as follows:

Article XIV. Carryout Bag Tax.


In this Article, the following terms have the following meanings:

**Director** means the Director of the Department of Finance.

**Carryout bag** means a paper or plastic bag provided by a retail establishment to a customer at the point of sale, pickup, or delivery to carry purchased items. **Carryout bag** does not include:

1. a bag provided by a pharmacist that contains a prescription drug;
2. any newspaper bag or bag intended for initial use as a dry cleaning, garbage, pet waste, or yard waste bag;
3. a bag provided at the point of sale at a seasonal event, such as a farmers market, street fair, or yard sale, or by an occasional retailer;
4. a paper bag that a restaurant gives a customer to take prepared or leftover food or drink from the restaurant; or
5. a bag used to package a bulk item or to contain or wrap a perishable item.

**Occasional retailer** means a retail establishment that engages in the retail sale of goods no more than 6 days in any calendar year.

**Restaurant** means any lunchroom, cafe, or other establishment located in a permanent building for the accommodation of the public, equipped with a kitchen containing facilities and utensils for preparing and serving meals to the public, and outfitted with a public dining area. A restaurant does not include any area of a supermarket, department store, or other retail establishment beyond the kitchen and public dining area.
Retail establishment means any person engaged in the retail sale of goods. Retail establishment includes any supermarket, convenience store, shop, service station, or restaurant, and any other sales outlet where a customer can buy goods.

52-102. Tax imposed.

(a) A tax in the amount of 5 cents is levied and imposed on each customer for each carryout bag that a retail establishment provides to the customer.

(b) Each retail establishment that provides a carryout bag to a customer must collect the amount of the tax imposed under subsection (a) when the customer makes any payment for goods in person, through the Internet, by telephone, by facsimile, or by any other means. The retail establishment must hold the taxes required to be collected under this Section in trust for the County until remitted as required under Section 52-103.

(c) Each retail establishment may retain 1 cent from each 5-cent tax that the retail establishment collects to cover the administrative expense of collecting and remitting the tax to the County.

(d) A retail establishment must indicate on the customer's transaction receipt the number of carryout bags that the retail establishment provided to the customer and the total amount of tax levied under this Section.

52-103. Remittance.

(a) Except as provided in subsection (b), on or before the 25th day of each month, each retail establishment must remit the full amount of the tax collected for all carryout bags provided to a customer during the previous month, less the amount retained under Section 52-102 (c).
(b) A retail establishment is only required to remit the taxes to the Director when the cumulative taxes collected under Section 52-102(a) since the previous remittance, if any, exceed $100.

(c) Each remittance must be accompanied by a report of all transactions that involve bags subject to the tax. The report must be on a form supplied by the Director and must contain the number of bags supplied or provided to customers, the amount of tax required by this Section to be collected and any other information the Director requires to assure that the proper tax has been remitted to the County.

(d) (1) If the retail establishment does not file a required report by the deadline established under subsection (a), the Director may estimate the amount of tax due. The Director may base the estimate on a reasonable projection of bags supplied or provided and may consider taxes reported by other retail establishments.

(2) The Director may send a notice of the estimated tax due, including interest and penalty, to the retail establishment’s last known address. The retail establishment must pay the estimated tax, including any interest and penalty assessed by the Director, within 10 days after the notice is sent.

(e) Each retail establishment must preserve for 3 years all records necessary to determine the amount of the tax due under this Section.

(f) The Director may inspect any records required to be kept under this Section at any reasonable time.

(g) The Director must deposit all taxes remitted under this Section into the stormwater management fund created under Section 19-35, after deducting the cost of administering this Article.

52-104. Interest and penalties.
(a) If a retail establishment does not remit to the Director any tax owed under Section 52-103 when due, the retail establishment is liable for:

(1) interest on the collections at the rate of one percent per month for each month or part of a month after the remittance is due; and

(2) a penalty of 5 percent of the amount of the collections per month or part of a month after the remittance is due, up to 25 percent of the tax collected.

(b) The Director must collect any interest and penalty as part of the remittance due.

52-105. Prohibited conduct.

A retail establishment must not:

(a) neglect or refuse to collect or remit the tax levied under this Article;

(b) file an incomplete, false, or fraudulent report to the Director;

(c) neglect or refuse to keep complete and accurate records; or

(d) refuse to allow the Director to inspect and audit the retail establishment’s records.

52-106. Regulations.

The County Executive may adopt regulations under method (2) to implement this Article.

52-107. Enforcement.

Any violation of this Article is a Class A civil violation. Each violation is a separate offense. A conviction under this Section does not relieve a retail establishment from paying a remittance owed to the County.

Sec. 2. Effective Date.

This Act takes effect on January 1, 2012.
Approved:

Valerie Ervin, President, County Council

Approved:

Isiah Leggett, County Executive

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council