

Special Report

---

---

**Property Tax Credit for Seniors**

---

---



Office of the County Auditor  
Baltimore County, Maryland  
April 2006

Special Report

---

---

**Property Tax Credit for Seniors**

---

---

Fiscal and Policy Analysis  
Project Team

Elizabeth J. Irwin, Director

Scott P. Gates, Senior Analyst

Carrie B. Vivian, Staff Analyst



Office of the County Auditor  
Baltimore County, Maryland  
April 2006



BALTIMORE COUNTY, MARYLAND  
OFFICE OF THE COUNTY AUDITOR

BRIAN J. ROWE, CPA  
COUNTY AUDITOR

COURTHOUSE - ROOM 221  
TOWSON, MARYLAND 21204  
410-887-3193  
410-887-4621 (Fax)

MARY P. ALLEN, CPA  
DEPUTY COUNTY AUDITOR

April 24, 2006

Honorable Members of the County Council  
Baltimore County, Maryland

We were asked to research options for and analyze the fiscal impact of providing local property tax relief to Baltimore County's senior citizens, many of whom have become ineligible for the property tax relief provided by the outdated State Homeowner's Property Tax Credit Program (HPTCP). In addition, we were asked to determine how the State Homeowner's Property Tax Credit could be updated.

Based on our study, we recommend a local supplement to the Homeowners' Property Tax Credit Program as a policy option. This local supplement would reduce County revenues by approximately \$1 million in the initial year. Further, we determined that the State Homeowners' Property Tax Credit could be updated by changing its criteria to reflect current property values, income levels, and net worth. Recognizing that the State recently enacted changes to the HPTCP, our recommendations provide a local supplement over and above the State credit by indexing eligibility criteria and benefits to keep pace with inflation in future years.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brian J. Rowe".

Brian J. Rowe, CPA  
County Auditor



## **Property Tax Credit for Seniors**

Baltimore County seniors (many with fixed incomes) have been experiencing an increasing property tax burden due to rising assessment values. Seniors who once benefited from property tax relief provided by the State Homeowners' Property Tax Credit have become ineligible for this relief because it has not kept pace with inflation and rising assessment values. Our task was to research options for and analyze the fiscal impact of providing additional local property tax relief to seniors in Baltimore County, as well as determine how the State Homeowner's Property Tax Credit Program could be updated. After considerable study, we recommend a local supplement to the Homeowners' Property Tax Credit Program as a policy option. This local supplement would reduce County revenues by approximately \$1 million in the initial year. Further, we determined that the State's Homeowners' Property Tax Credit Program could be updated by changing its criteria to reflect current property values, income levels, and net worth. Recognizing that the State recently enacted changes to the HPTCP, our recommendations provide a local supplement over and above the State credit by indexing eligibility criteria and benefits to keep pace with inflation in future years.

### **Background**

The percentage of Baltimore County citizens aged 65 and above is considerably higher than the state average (Census 2000: 14.6% vs. 11.3%). The Homestead Credit effectively caps the annual assessment increase (currently 4% for Baltimore County) on real property.<sup>1</sup> However, with more individuals living longer lives, even with this cap, the cumulative effect over time can be substantial for those on fixed incomes.

### **Homeowners' Tax Credit Program**

The Homeowners' Tax Credit Program limits an eligible homeowner's property tax bill based on a fixed percentage of the homeowner's combined gross income.<sup>2</sup> This credit is allowed only in cases where net worth (excluding home value, the cash value of the homeowner's life insurance policies, and tangible personal property) is below \$200,000, and applies only to the property taxes owed on the first \$150,000 of assessed valuation. The formula for calculating the benefit favors those with lower incomes.

The State Department of Assessments and Taxation reports that approximately 79% of those receiving the Homeowners' credit in Baltimore County are aged 65 or older. The number of homeowners (of all ages) receiving the Homeowners' credit in the County has declined from 14,620 in FY 1993 to 8,317 in FY 2006. Absent any change in State law, that number was expected to decline further in FY 2007.

Similarly, the aggregate dollar amount of Homeowners' credit tax relief for Baltimore County homeowners (all ages) has declined over that period as well, from approximately \$8.0 million in FY 1993 to approximately \$6.2 million in FY 2006. Absent any change in State law, that figure was expected to decline further in FY 2007. The average dollar amount of the Homeowners' credit has risen over time from \$548 in FY 1993 to

---

<sup>1</sup> §9-105, Tax-Property Article, Maryland Code

<sup>2</sup> §9-104, Tax-Property Article, Maryland Code

\$746 in FY 2006. See Exhibit A for a 14-year history of State Homeowners' credits to Baltimore County residents.

Rising property values and declining numbers of individuals receiving the Homeowners' credit strongly suggested that revisions to the Homeowners' Property Tax Program law were needed in order to assure that the tax relief provided (the number receiving the credit and the average dollar amount) is in real terms on par with relief offered in past years. For example, the maximum property assessment against which the credit may be calculated (currently \$150,000) had not increased since July 1, 1990. Also, the benefit formula had not been updated since the 1998 session of the General Assembly.

### **Changes to State Law**

This year, the Governor stated his goal to revise the Homeowners' credit to provide more homeowners with property tax relief. In fact, many bills were presented in the Maryland General Assembly (MGA) this year that would have accomplished this goal by varying means. In the end, a revision to the Homeowners' credit program (SB382) was passed into law this year. The State law changes include:

- An increase in the assessed property value limit from \$150,000 to \$300,000;
- The exclusion of the cash value of any qualified retirement savings plan or individual retirement accounts from the \$200,000 net worth eligibility limit;
- The establishment of an eligibility limit of \$60,000 in combined income; and
- An updated benefit formula to increase the credit linked to lower combined income tiers.<sup>3</sup>

As a result of these changes, more Baltimore County homeowners will benefit from the State program, and the average dollar amount per credit received will increase as well.<sup>4</sup> Note that because the State reimburses the County for the total amount of these credits, there is no direct fiscal impact to the County from these changes alone. Only those local governments with a local supplement (to be discussed in the next section) will be directly affected.

It is also noteworthy that HB 288, which would allow a county to adopt a local property tax credit for those 70 and older and would allow each jurisdiction to set the amount and duration of that credit, passed unanimously in both the House of Delegates and the Senate in the 2006 session.

---

<sup>3</sup> See Exhibit B for a side-by-side comparison of the provisions of the prior State law vs. the amended State law.

<sup>4</sup> See Exhibit C for the anticipated effects of the State law changes.

## Local Supplement to Homeowners' Tax Credit

Regardless of any changes at the State level, a local supplement to the Homeowners' tax credit is authorized by State law.<sup>5</sup> As of the current tax year, five counties had adopted supplements.<sup>6</sup>

The authorizing code affords counties broad latitude regarding the provisions of the law that may be altered for the purposes of establishing and targeting a local supplement. Options include increasing the limitation on assessed value of the home, raising the combined net worth cap, and linking eligibility to age, years residing in dwelling, etc. (See Exhibit D for more details.) In contrast to changes to the State law, enactment of a local supplement would have a direct fiscal impact on the County in the form of forgone revenue - to the degree that it is more generous than State law.

A local supplement provides a potential opportunity for correcting a considerable shortcoming of the State law: the State eligibility limits and benefit formula are tied to specific dollar amounts (e.g., \$300,000 of assessed value) and are not indexed to any measure of inflation. As such, the law would need to be updated on nearly an annual basis in order to maintain approximately the same relative level of benefits to about the same target population—which has not been accomplished historically. For Baltimore County recipients, a local supplement tied to increases in taxable assessment values and consumer prices (inflation) would eliminate the need for regular updates and minimize declines in the number of eligible homeowners and the level of tax credit relief from one year to the next.

We recommend changing County law to provide such a local supplement based on age (e.g., 65 years or older). In addition to indexing the net worth eligibility ceiling (\$200,000), the assessment value ceiling (\$300,000), and the benefit formula, so that eligibility and benefits keep pace with inflation in future years, we recommend that the law exclude the first \$12,000 of combined income from the calculation of a homeowner's maximum tax. Based on information obtained from the State Department of Assessments and Taxation, in the initial year such a local supplement would cost the County approximately \$1 million with a maximum local tax credit per homeowner equal to \$160.<sup>7</sup> While indexing in future years will ensure that homeowners do not become ineligible for the tax credit due to inflation-driven increases in income, home value, or net worth, the incremental increased annual cost to the County due to indexing in future years is anticipated to be minimal.

---

<sup>5</sup> §9-215, Tax-Property Article, Maryland Code

<sup>6</sup> According to the MD Department of Legislative Services, prior to July 1, 2005, Montgomery and Anne Arundel Counties each provided a local supplement; on that date, Charles, Frederick, and Howard Counties each began providing a local supplement.

<sup>7</sup> See Exhibits E through H for the estimated effect of the local supplement on qualified homeowners for varying assumptions regarding income and property assessment value.

The State of Maryland Homeowners' Tax Credit Program administers the local supplemental tax credits. Information provided on the standard form for the State-level credit is sufficient to determine eligibility for the local supplements offered by those five counties that now offer the supplement. Though Baltimore County would be required to reimburse the State for administrative costs of a County supplement, such costs would likely be negligible.<sup>8</sup>

### **St. Mary's County**

St. Mary's County's recently enacted law provides property tax relief for those aged over 70 whose taxable net income does not exceed \$80,000. The Department of Legislative Services' recent fiscal note on the St. Mary's program reveals an actual revenue loss/local property tax relief of \$47,400 for FY 2006 and estimates that this figure will rise to \$393,970 in FY 2007 and \$633,377 in FY 2008.<sup>9</sup>

St. Mary's County officials report that many seniors were surprised at how little tax relief (often on the order of \$20 to \$50) they received. In response, seniors are being informed that over time the savings will increase, and they are being reminded that the savings apply only to the local portion of their property tax bills. Given the relative size of Baltimore County's population aged over 70, as well as this County's slightly higher average property tax bills for that age group, we expect that the revenue loss/property tax relief resulting from practically identical law in Baltimore County would be in the range of 12 to 15 times higher than for St. Mary's County, or \$4.7 million to \$5.9 million for FY 2007.

One disadvantage of adopting a policy such as that of St. Mary's County would be the considerable administrative costs to the County associated with processing applications, including determination of eligibility, and the need for coordination of effort with and between multiple County agencies. For this reason the alternative option of a local supplement to the Homeowners' property tax credit, as discussed above, is a preferable policy option. Further, the State Attorney General's Office finds that the St. Mary's program, if implemented on an ongoing basis, would be unconstitutional.<sup>10</sup> Specifically, the Attorney General finds that it would violate the Uniformity Clause of Article 15 of the Maryland Constitution by in effect freezing assessments and treating each affected property as its own class of property. The implication for Baltimore County action is that tax relief policy should be tied to actual assessment values.

---

<sup>8</sup> Anne Arundel County officials have confirmed that their jurisdiction incurs no substantial costs for State administration of their local supplement.

<sup>9</sup> The fiscal note covers HB 623, which would repeal the July 1, 2008 sunset on the St. Mary's County program.

<sup>10</sup> See Exhibit I for the State Attorney General's legal opinion.

## **Scope, Objectives, Methodology**

We researched options for and analyzed the fiscal impact of providing local property tax relief to Baltimore County's senior citizens, many of whom have become ineligible for the property tax relief provided by the State's Homeowner's Property Tax Credit program.

The purpose of our analysis was to determine what options are available at the local level for providing property tax relief to senior citizens in addition to that provided by the State Homeowner's Tax Credit Program, which had become inadequate because it had not kept pace with inflation and rising property values. Further, our purpose was to determine the fiscal impact to the County of providing a local property tax credit for seniors.

Our analysis consisted of reviewing County and State laws pertaining to local property tax credit options and related State law changes, contacting individuals in other counties to discuss local property tax credit programs for seniors in their jurisdictions, and obtaining information from the State Department of Assessments and Taxation regarding current recipients of the State homeowner's property tax credit. Our analysis did not constitute an audit conducted in accordance with generally accepted government auditing standards. Our work was conducted during the period January to April 2006.

## Exhibit A

### 14-Year History of State Homeowners' Property Tax Credit to Baltimore County Homeowners

Fiscal Year	Accounts Receiving Credit	Total Amount of Credits	Increase/ (Decrease) In Accounts	Increase/ (Decrease) In Credits	Average Credit Amount
1993	14,620	\$8,004,421	--	--	\$548
1994	15,056	\$8,635,621	436	\$631,200	574
1995	14,719	\$8,941,608	(337)	\$305,987	607
1996	14,604	\$9,049,581	(115)	\$107,973	620
1997	13,736	\$8,426,390	(868)	(\$623,191)	613
1998	12,902	\$7,951,649	(834)	(\$474,741)	616
1999	11,893	\$7,324,960	(1,009)	(\$626,689)	616
2000	11,879	\$8,179,197	(14)	\$854,237	689
2001	11,232	\$7,752,729	(647)	(\$426,468)	690
2002	10,523	\$6,955,113	(709)	(\$797,616)	661
2003	9,389	\$6,197,678	(1,134)	(\$757,435)	660
2004	9,035	\$6,377,918	(354)	\$180,240	706
2005	8,786	\$6,368,159	(249)	(\$9,759)	725
2006	8,317	\$6,206,071	(469)	(\$162,088)	746
Net Increase (Decrease)			(6,303)	(\$1,798,350)	
2007 <sup>1</sup>	8,684	\$8,200,280	367	\$1,994,209 <i>EST</i>	\$944
Net Increase (Decrease)			(5,936)	\$195,859	

<sup>1</sup> Based on Amended State law.

**Exhibit B****Comparison of State Homeowners' Tax Credit Program (§ 9-104) Provisions****Prior State Law vs. Amended State Law**

	<b>Prior State Law</b>	<b>Amended State Law</b>
<b>Maximum Assessment Allowed</b>	\$150,000	\$300,000
<b>Benefit Formula</b>	0% of first \$4,000 of Combined Income 1% of second \$4,000 of Combined Income 4.5% of third \$4,000 of Combined Income 6.5% of fourth \$4,000 of Combined Income 9% of Combined Income over \$16,000	0% of first \$8,000 of Combined Income 4% of the next \$4,000 of Combined Income 6.5% of the next \$4,000 of Combined Income 9% of Combined Income over \$16,000
<b>Net Worth Limit</b>	\$200,000	\$200,000
<b>Combined Income Limit</b>	No Absolute Limit	\$60,000
<b><u>Change to the Definition of Assets</u></b>	N/A	<u>Excludes</u> the cash value of retirement savings plans or individual retirement accounts
<b><u>Change to the Definition of Assets</u></b>	N/A	<u>Includes</u> any withdrawal, payment, or distribution from any retirement savings plans or an individual retirement account

Sources: Maryland Department of Legislative Services and State Department of Assessments and Taxation

OCA, March 27, 2006

## Exhibit C

### Prior State Law vs. Amended State Law

#### Estimated Policy Effects for Baltimore County, FY 2007

	<b>Prior State Law</b>	<b>Amended State Law</b>	<b>Difference</b>
<b>Number of Accounts Receiving the Credit</b>	8,255	8,684	429
<b>Average Credit Amount</b>	\$748	\$944	\$196
<b>Total State General Fund Expenditure</b>	\$6,177,272	\$8,200,280	\$2,023,008

Sources: Maryland Department of Legislative Services and State Department of Assessments and Taxation

OCA, March 27, 2006

**Article - Tax - Property**

**§ 9-215.**

(a) The Mayor and City Council of Baltimore City or the governing body of a county may grant, by law, a local supplement to the Homeowners Property Tax Credit Program provided under § 9-104 of this title.

(b) The county or Baltimore City may not obtain reimbursement under § 9-104(q) of this title for the amount of the local supplement authorized under this section.

(c) The county shall notify the Department of the enactment of the local supplement and any change in the local supplement in accordance with any guidelines specified by the Department.

(d) (1) The Department is responsible for the administrative duties that relate to the application and determination of eligibility for a property tax credit under this section.

(2) The county shall reimburse the Department for the reasonable cost of administering the Tax Credit Program under this section.

(e) (1) Except as provided in paragraph (2) of this subsection, the local supplement authorized in accordance with subsection (a) of this section shall be subject to the provisions of the State Homeowners Property Tax Credit Program provided under § 9-104 of this title.

(2) The Mayor and City Council of Baltimore City or the governing body of a county:

(i) may alter, by law, the following provisions for purposes of a local supplement granted under this section:

## Exhibit D

1. the limitation on the assessed value of a dwelling taken into account in determining total real property tax under § 9-104(a)(13) of this title;

2. the percentages and combined income levels specified under § 9-104(g) of this title; and

3. the limitation on combined net worth of the homeowner under § 9-104(i) of this title; and

(ii) may provide, by law, for limitations on eligibility for a local supplement granted under this section in addition to the requirements for eligibility under § 9-104 of this title.

(3) The additional eligibility criteria provided under paragraph (2)(ii) of this subsection may include:

(i) criteria limiting eligibility for a local supplement granted under this section to homeowners:

1. who have reached a certain age;

2. who have resided in their dwellings for more than a certain number of years; or

3. whose assessments have increased more than a certain percentage over a certain period of time;

(ii) any combination of the criteria specified in item (i) of this paragraph; and

(iii) any additional criteria for eligibility that the Mayor and City Council of Baltimore City or the governing body of a county determine to be necessary or appropriate.

**Estimated Effect On Qualified Homeowner  
With Combined Income of \$52,900  
Based On Maximum Property Assessment of \$300,000**

State Homeowners Tax Credit

Maximum Assessment	Property Tax Rate			Taxes Owed	Max. Tax	State Tax Credit
	State	County	Combined			
\$300,000	0.132	1.115	1.247	\$3,741 <sup>1</sup>	\$3,741 <sup>2</sup>	\$0

Bill 42-06

Maximum Assessment	Property Tax Rate			Taxes Owed	Max. Tax	Total Tax Credit
	State	County	Combined			
\$300,000	0.132	1.115	1.247	\$3,741 <sup>1</sup>	\$3,581 <sup>2</sup>	\$160
County Supplement						<u>\$160</u>

Notes:

<sup>1</sup> Taxes owed = \$300,000 / 100 X 1.247 = \$3,741

<sup>2</sup> Maximum tax based on combined income of \$52,900:

Income Level	State Law		Recommended Local Supplement		
	State %	Max. Tax	County %	Max. Tax	County Cost
\$8,000	0%	\$0	0%	\$0	
\$4,000	4%	\$160	0%	\$0	\$160
\$4,000	6.5%	\$260	6.5%	\$260	
<u>\$36,900</u>	9.0%	<u>\$3,321</u>	9%	<u>\$3,321</u>	
<u>\$52,900</u>		<u>\$3,741</u>		<u>\$3,581</u>	<u>\$160</u>

**Estimated Effect On Qualified Homeowner  
With Combined Income of \$30,000  
Based On Maximum Property Assessment of \$300,000**

State Homeowners Tax Credit

Maximum Assessment	Property Tax Rate			Taxes Owed	Max. Tax	State Tax Credit
	State	County	Combined			
\$300,000	0.132	1.115	1.247	\$3,741 <sup>1</sup>	\$1,680 <sup>2</sup>	\$2,061

Bill 42-06

Maximum Assessment	Property Tax Rate			Taxes Owed	Max. Tax	Total Tax Credit
	State	County	Combined			
\$300,000	0.132	1.115	1.247	\$3,741 <sup>1</sup>	\$1,520 <sup>2</sup>	\$2,221

County Supplement

\$160

Notes:

<sup>1</sup> Taxes owed = \$300,000 / 100 X 1.247 = \$3,741

<sup>2</sup> Maximum tax based on combined income of \$30,000:

Income Level	State Law		Recommended Local Supplement		
	State %	Max. Tax	County %	Max. Tax	County Cost
\$8,000	0%	\$0	0%	\$0	
\$4,000	4%	\$160	0%	\$0	\$160
\$4,000	6.5%	\$260	6.5%	\$260	
\$14,000	9.0%	\$1,260	9%	\$1,260	
<u>\$30,000</u>		<u>\$1,680</u>		<u>\$1,520</u>	<u>\$160</u>

**Estimated Effect On Qualified Homeowner  
With Combined Income of \$30,000  
Based On Average County Property Assessment**

State Homeowners Tax Credit

Average County Assessment	Property Tax Rate			Taxes Owed	Max. Tax	State Tax Credit
	State	County	Combined			
\$164,634	0.132	1.115	1.247	\$2,053 <sup>1</sup>	\$1,680 <sup>2</sup>	\$373

Bill 42-06

Average County Assessment	Property Tax Rate			Taxes Owed	Max. Tax	Total Tax Credit
	State	County	Combined			
\$164,634	0.132	1.115	1.247	\$2,053 <sup>1</sup>	\$1,520 <sup>2</sup>	\$533

County Supplement \$160

Notes:

<sup>1</sup> Taxes owed = \$164,634 / 100 X 1.247 = \$2,053

<sup>2</sup> Maximum tax based on combined income of \$30,000:

Income Level	State Law		Recommended Local Supplement		
	State %	Max. Tax	County %	Max. Tax	County Cost
\$8,000	0%	\$0	0%	\$0	
\$4,000	4%	\$160	0%	\$0	\$160
\$4,000	6.5%	\$260	6.5%	\$260	
\$14,000	9.0%	\$1,260	9%	\$1,260	
<u>\$30,000</u>		<u>\$1,680</u>		<u>\$1,520</u>	<u>\$160</u>

**Estimated Effect on Qualified Homeowners at Various Combined Income Levels Using  
Various Property Assessments**

State Homeowners Tax Credit

Income Level	Max. Tax	Property Assessment				
		\$100,000	\$150,000	\$200,000	\$250,000	\$300,000
\$8,000	\$0	(\$1,247)	(\$1,871)	(\$2,494)	(\$3,118)	(\$3,741)
\$12,000	\$160	(\$1,087)	(\$1,711)	(\$2,334)	(\$2,958)	(\$3,581)
\$15,000	\$355	(\$892)	(\$1,516)	(\$2,139)	(\$2,763)	(\$3,386)
\$20,000	\$780	(\$467)	(\$1,091)	(\$1,714)	(\$2,338)	(\$2,961)
\$25,000	\$1,230	(\$17)	(\$641)	(\$1,264)	(\$1,888)	(\$2,511)
\$30,000	\$1,680	\$0	(\$191)	(\$814)	(\$1,438)	(\$2,061)
\$35,000	\$2,130	\$0	\$0	(\$364)	(\$988)	(\$1,611)
\$40,000	\$2,580	\$0	\$0	\$0	(\$538)	(\$1,161)
\$45,000	\$3,030	\$0	\$0	\$0	(\$88)	(\$711)
\$50,000	\$3,480	\$0	\$0	\$0	\$0	(\$261)
\$52,900 <sup>1</sup>	\$3,741	\$0	\$0	\$0	\$0	\$0

<sup>1</sup> Any homeowner with combined income equal to or in excess of \$52,900 is ineligible for a State property tax credit based upon current property tax rates.

Recommended Local Supplement

Income Level	Max. Tax	Property Assessment				
		\$100,000	\$150,000	\$200,000	\$250,000	\$300,000
\$8,000	\$0	(\$1,247)	(\$1,871)	(\$2,494)	(\$3,118)	(\$3,741)
\$12,000	\$0	(\$1,247)	(\$1,871)	(\$2,494)	(\$3,118)	(\$3,741)
\$15,000	\$195	(\$1,052)	(\$1,676)	(\$2,299)	(\$2,923)	(\$3,546)
\$20,000	\$620	(\$627)	(\$1,251)	(\$1,874)	(\$2,498)	(\$3,121)
\$25,000	\$1,070	(\$177)	(\$801)	(\$1,424)	(\$2,048)	(\$2,671)
\$30,000	\$1,520	\$0	(\$351)	(\$974)	(\$1,598)	(\$2,221)
\$35,000	\$1,970	\$0	\$0	(\$524)	(\$1,148)	(\$1,771)
\$40,000	\$2,420	\$0	\$0	(\$74)	(\$698)	(\$1,321)
\$45,000	\$2,870	\$0	\$0	\$0	(\$248)	(\$871)
\$50,000	\$3,320	\$0	\$0	\$0	\$0	(\$421)
\$52,900	\$3,581	\$0	\$0	\$0	\$0	(\$160)
\$54,700 <sup>2</sup>	\$3,743	\$0	\$0	\$0	\$0	\$0

<sup>2</sup> Any homeowner with combined income equal to or in excess of \$54,700 is ineligible for the County supplemental property tax credit based upon current property tax rates.

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL

DONNA HILL STATION  
Deputy Attorney General

ROBERT A. ZARNOCH  
Assistant Attorney General  
Counsel to the General Assembly

BONNIE A. KIRKLAND  
KATHRYN M. ROWE  
SANDRA J. COHEN  
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND  
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

February 2, 2006

The Honorable John L. Bohanan, Jr.  
415 Lowe House Office Building  
Annapolis, Maryland 21401-1991

Dear Delegate Bohanan:

You have asked for advice on whether the 3-year sunset provision on Chapter 195 of the Acts of 2005, "St. Mary's County - Property Tax - Credit for Individuals Over Age 70" may be repealed without violating the Uniformity Clause. You indicated that committee staff was advised that the sunset provision was necessary, and you have further asked for clarification on why a similar bill was approved without a sunset. It is my view that the sunset provision may be repealed, but the statute will not validate a local law adopted pursuant it that would otherwise be of doubtful constitutionality.

The principal inquiry when reviewing property tax credits and exemptions is whether the proposed credit or exemption would violate the Uniformity Clause. Article 15 of the Maryland Declaration of Rights provides that the General Assembly shall provide by uniform rules for the assessment classification and subclassification of land, improvements on land and personal property. All taxes levied by the State, counties and Baltimore City shall be uniform within each classification. Article 15 has been understood to require that within each taxing jurisdiction and within each classification, each taxpayer's property should be assessed at the same proportion of value and the same tax rate should be applied. 62 *Opinions of the Attorney General* 54, 56 (1977).

The Homeowners' Tax Credit Program, Tax-Property Article (TP), § 9-104 provides a property tax credit for homeowners based on the amount of their income. When originally enacted in 1974, the tax credit was limited to homeowners age 60 and older and disabled homeowners.

The Honorable John L. Bohanan, Jr.  
February 2, 2006  
Page 2

The bill review letter on that bill, adopted as an Opinion at 59 *Opinions of the Attorney General* 683 (1974) concluded that the bill was constitutional. ... It further concluded that the bill did not violate the guarantee of uniformity of taxation... because "[a]ll taxpayers receiving the benefits of the measure continue to pay according to value, although under the mechanics of the bill some portion of their payment is being subsidized by the State."

Property tax credits which do not have the effect of limiting assessments (as in the Homestead Property Tax Credit) and are based on other considerations, such as income, have been upheld. 59 *Opinions of the Attorney General* 683, 685-686 (1974). And it has long been recognized that the General Assembly has broad power to grant exemptions from taxation when reasonable and for a public purpose. When made for such a purpose and uniformly applied, there is no violation of Art. 15. *Murray v. Comptroller*, 241 Md. 383, 392-393 (1966); 68 *Opinions of the Attorney General* 173, 185 (1983). Many county property tax credits have been enacted over the years. See Title 9, Subtitle 3 of the Tax Property Article.

House Bill 143 (Chapter 196 of the Acts of 2005) authorized the governing body of Carroll County to grant, by law, a property tax credit against county property tax imposed on real property used as a principal residence and owned by certain classes of individuals who are at least 65 years old and are of limited income. The bill further authorized the County to specify, by law, eligibility criteria, the amount and duration of the credit, regulations and procedures and other necessary provisions. Based on the analysis above, this credit would not violate the Uniformity Clause.

On the other hand, as introduced, House Bill 121 (Chapter 195 of 2005) added Tax-Property Article (TP), §9-320(c) to authorize the governing body of St. Mary's County to grant, by law, a property tax credit against county property tax imposed on real property owned by an individual at least 70 years old. It contained no income limitation and no authority to establish additional eligibility criteria or additional regulations and procedures. Further, it is my understanding that St. Mary's County had already adopted local property tax relief that amounted to a freeze on assessments, for which HB 121 would have served as the

---

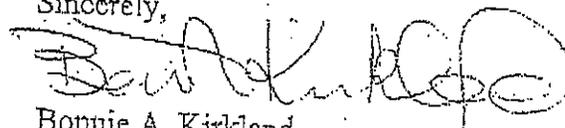
<sup>1</sup> See Letter of Advice to the Honorable John R. Leopold from Assistant Attorney General Kathryn M. Rowe dated March 4, 2004. Further, a draft bill that would have imposed a property tax assessment freeze on owner-occupied residential property of a person who was at least 60 years of age, with an income of less than \$50,000 was found to be inconsistent with the Uniformity Clause. The objectionable feature was the freeze on assessments, as opposed to a tax credit based on income. Letter of Advice to the Honorable Robert Frank from Assistant Attorney General Richard E. Israel dated November 27, 1995.

The Honorable John L. Bohanan, Jr.  
February 2, 2006  
Page 3

enabling act. As described above, a freeze on assessments would violate the Uniformity Clause, unless done so as a temporary measure. *72 Opinions of the Attorney General 350* (1987). Thus, the need for a sunset provision. As finally enacted, HB 121 bill does not offend the Uniformity Clause, and it is my view that the sunset provision may be repealed. But TP §9-320(c) will not validate a local law adopted pursuant to it that would otherwise be of doubtful constitutionality.

I hope this is responsive to your inquiry.

Sincerely,



Bonnie A. Kirkland  
Assistant Attorney General

BAK/pcr

J. JOSEPH CIBRAN, JR.  
ATTORNEY GENERAL

DONNA HILL STATON  
Deputy Attorney General

ROBERT A. ZARNOCH  
Assistant Attorney General  
Counsel to the General Assembly

BONNIE A. KIRKLAND  
KATHRYN M. ROWE  
SANDRA J. COHEN  
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND  
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

February 17, 2006

The Honorable John L. Bohanan, Jr.  
415 House Office Building  
Annapolis, Maryland 21401-1991

Dear Delegate Bohanan:

You have requested additional advice concerning the Senior Property Tax Credit enacted by Chapter 195 of the Acts of 2005 and the St. Mary's County ordinance adopted in September 2005. Your questions and my answers appear below.

Does the local ordinance comply with the enabling statute?

As explained in my letter of February 2, 2006, House Bill 121 (Chapter 1095 of 2005) added Tax-Property Article (TP), §9-320(c) to authorize the governing body of St. Mary's County to grant, by law, a property tax credit against county property tax imposed on real property owned by an individual at least 70 years old. As amended, the bill provided that the property be used as a principal residence of the individual and that the individual be of limited income, and authorized the County to provide, by law, for eligibility criteria for the credit and for regulations and procedures for the application and processing of requests for the credit.

On September 27, 2005, the County Commissioners adopted an ordinance to amend Chapter 267 of the Code of Public Local Laws of St. Mary's County. In doing so, the County Commissioners added the requirement that the senior homeowner be of limited income and provided in its procedures for a refund for fiscal year 2006. As the local ordinance includes a "limited income" requirement and requires the applicant to be used as the individual's dwelling, it is my view that, on its face, the ordinance complies with Chapter 195.

However, the local ordinance amounts to a freeze on local property taxes. As stated in my previous letter, a freeze would raise the uniformity issue under Article 15 of the

The Honorable John L. Bohanan, Jr.

Page 2

February 17, 2006

Declaration of Rights, unless done as a temporary measure. As the local ordinance contains no termination date (sunset), standing by itself, it would be of doubtful constitutional validity. However, it is also my view that the sunset in the enabling law would serve to terminate the local ordinance because the authorization to enact a local credit would expire with the sunset of the enabling law. If the sunset is removed during this legislative session (House Bill 623), the constitutional issue arises again. The options for addressing this issue appear to be: leave the sunset in the enabling law, TP §9-320(c); amend the local ordinance to eliminate the uniformity problem; or use the existing statutory authority under TP §9-215 to implement a local supplement to the Homeowners Property Tax Credit Program to provide the intended property tax relief.

Is additional State authorization required for St. Mary's County to provide a tax refund for 2006?

In light of the fact that the local ordinance was not adopted until September 27, 2005, well after the beginning of the fiscal year, refunds were desired to be issued. It is my view that the authorization in Chapter 195 to "provide, by law, for ... any other provision necessary to carry out the credit under this section" is sufficient authority for the County to provide for a refund for the first year of the credit.

Please clarify the need for inclusion of "limited income."

The Homeowners' Tax Credit Program under TP §9-104 provides credits against property taxes based on property tax liability and income. The bill review letter on the bill establishing the Program, adopted as 59 *Opinions of the Attorney General* 683 (1974) concluded that the bill was constitutional and did not violate the guarantee of uniformity of taxation because "[a]ll taxpayers receiving the benefits of the measure continue to pay according to value, although under the mechanics of the bill some portion of their payment is being subsidized by the State." In other words, for all taxpayers in the class created by the income limit, their property is assessed at the same proportion of value and the same tax rate is applied, but part of their tax liability is being paid by the State.

In 1988, after the Attorney General had concluded that the Homestead Property Tax Credit Program, which provides credits for property taxes attributable to assessment increases that exceed a specified percentage in a given year, was unconstitutional because it could no

---

However, this authority does not amount to authority to issue refunds generally, which would require specific statutory authority.

The Honorable John L. Bohanan, Jr.

Page 3

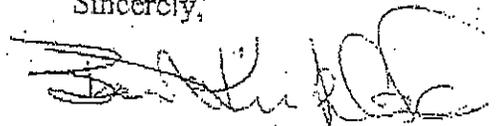
February 17, 2006

longer be regarded as a temporary measure<sup>2</sup>, the General Assembly, in HB 244, amended the Program to add an income factor to the computation of the credit. Relying on the 1974 advice cited above, the Bill Review Letter on HB 244 concluded that, while not free from doubt, the income-based criteria, which established the amount of the credit for those otherwise eligible, created in HB 244, would not violate the Uniformity Clause: "To the extent that the bill merely extends the existing program even at a reduce rate, it is our view that it is unconstitutional. However, to the extent that the bill revises the Program to base the credit on income, we think it could be upheld as constitutional."

Therefore, the portion of the 1988 law that did not violate the Uniformity Clause was the creation of classes which were determined by various levels of income and then entitled to a corresponding graduated tax credit. In other words, the predominant factor in the creation of those subclasses was income level - a factor unrelated to assessment value. However, that conclusion did not contradict the conclusion of *72 Opinions of the Attorney General* 350 (1987) which was issued the year before and stated that a percentage limitation on assessment increases over an extended time was unconstitutional. Consequently, the creation of an identifiable class of taxpayers based on income by the St. Mary's County ordinance for the purpose of establishing the eligibility criterion for a credit does not violate the Uniformity Clause. However, that conclusion does not authorize a mechanism for calculating the credit which offends uniformity within the created class. Consequently, the mechanism of this local credit, which essentially is an assessment freeze, would raise a serious uniformity issue under Article 15, unless done so as a temporary measure.

I hope this is responsive to your inquiry.

Sincerely,



Bonnie A. Kirkland  
Assistant Attorney General

BAK:as

<sup>2</sup> See Bill Review Letter on House Bill 789, dated May 21, 1986 and *72 Opinions of the Attorney General* 350 (1987).