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CITY OF BALTIMORE

BRANDON M. SCOTT  
Mayor



DEPARTMENT OF LAW  
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March 30, 2021

The Honorable President and Members  
of the Baltimore City Council  
Attn: Executive Secretary  
Room 409, City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202

Re: City Council Bill 21-0058 – Real Property Tax – Installment Plans

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 21-0058 for form and legal sufficiency. It would create a Subtitle 7A in Article 28 (Taxes) of the City Code to create an installment plan for the payment of certain real property taxes. This subtitle is authorized by Section 10-208 of the State Property Tax Article of the Maryland Code. Md. Code, Tax-Prop., § 10-208(a) (located in Subtitle 2 (“Advance Payments and Advance Billing”) of Title 10 (“Property Tax Payment”). This authorization is only to allow payment “in advance of the property tax bill” becoming due “for the county, municipal corporation, or special taxing district property tax imposed.” *Id.* It allows local governments to elect if they want to allow installment plans for advanced real property tax payments just as they can allow lump sum advanced payments. Md. Code, Tax-Prop., §10-205.

However, local governments “may not authorize advance payment or an installment payment schedule for property taxes imposed on real property that is subject to a deed of trust, a mortgage, or any other encumbrance that includes the escrowing of property tax payments.” Md. Code, Tax-Prop. § 10- 208(a)(3)(i) (making this enabling act subject to the provisions of Md. Code, Tax-Prop., § 10-205(a)(3)(iii)). This makes sense because escrows are already effectuating installments for the advanced payment of real property tax, usually via the mortgage payments.

The Law Department suggests one amendment to the bill to reflect that real property tax is always owed by the owner of the property, regardless of the name on the deed. Often a deed is in the name of a trust or other legal construct to allow a life estate with a reverter, such that the property reverts to the possession of another (usually family member) after the end of the person’s life. Maryland state tax law provides for these common situations: “For property tax purposes, the owner of a life estate, or other particular freehold estate, or term of years perpetually renewable in property is deemed the owner of the property and is liable for property tax on the property.” Md. Code, Tax-Prop., § 5-101(a). An amendment to remove this requirement is attached to this report.

Removal is recommended so that all those deemed to owe the property tax under state law are allowed this pre-payment benefit by the City. In contrast, to require that those who owe the taxes under state law must go through a process to change the name on the deed just to be eligible for a tax pre-payment plan could be seen to violate the Equal Protection Clause of the United States Constitution. The City would need to articulate a reason why some people who owe property taxes are allowed the benefits of a pre-payment plan and others similarly situated are not. *See, e.g., Christopher v. Montgomery County Dept. of Health and Human Services*, 381 Md. 188, 215-17 (2004) (“we are mindful that if a law is applied and administered by public authority with an evil eye and an unequal hand so as to make unjust discriminations between persons in similar circumstances, material to their rights, such denial of equal justice is within the prohibition of the Constitution’)(internal quotations omitted)”)(citations omitted); *see also e.g., Baltimore Gas and Elec. Co. v. Heintz*, 760 F.2d 1408, 1417 (4<sup>th</sup> Cir. 1985) (citing *Western & Southern L.I. Co. v. Board of Equalization*, 451 U.S. 648, 668, (1981) for the requirement that the courts determine whether the law’s “classification would promote that [legitimate government ] purpose”). The City should make sure that it can articulate “in what way the restrictive nature of the statutory provisions bears any reasonable relation to the public interest.” *Bruce v. Director, Dept. of Chesapeake Bay Affairs*, 261 Md. 585, 601 (1971).

Assuming such an articulation can be made, the bill could be approved for form and legal sufficiency because state law allows the City to create additional eligibility criteria for installment payment plans. Md. Code, Tax-Prop., § 10-208(c). Thus, Finance’s practice to require the name on the deed would be such an additional criterion. Although state law allows for local governments to enact such an additional criterion, it will narrow the group of people eligible for this pre-payment benefit.

Assuming the rational basis for the deed requirement is provided or the bill is amended to remove that requirement, the Law Department can approve the bill for form and legal sufficiency.

Very truly yours,



Hilary Ruley  
Chief Solicitor

cc: James L. Shea, City Solicitor  
Matthew Stegman, Mayor’s Office of Government Relations  
Elena DiPietro, Chief Solicitor, General Counsel Division  
Victor Tervalá, Chief Solicitor  
Ashlea Brown, Assistant Solicitor

AMENDMENTS TO COUNCIL BILL 21-0058  
(1<sup>st</sup> Reader Copy)

Proposed by: Law Dep't

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