

CITY OF BALTIMORE

SHEILA DIXON, Mayor



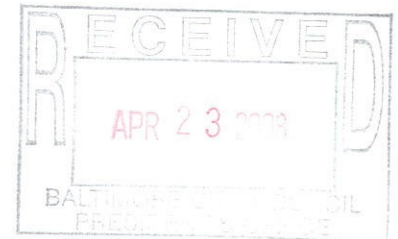
DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor
101 City Hall
Baltimore, Maryland 21202

April 22, 2008

The Honorable President and
Members of the Baltimore
City Council
c/o Karen Randle, Executive Secretary
409 City Hall
Baltimore, MD 21202

RE: City Council Bill 08-0058 – Property Tax Credits-
Energy Devices



Dear President and Members:

You have requested the advice of the Law Department regarding City Council Bill 08-0058. Bill 58 proposes to enact a property tax credit for buildings in which certain energy devices have been installed. The credit for single family dwellings would be available for one third of qualifying costs related to the purchase, assembly and installation of the energy device, subject to a maximum of \$25,000. The credit for multi-family dwellings and commercial or industrial use buildings would be one third of qualified costs for a qualified energy device, subject to a maximum credit of \$150,000. One fifth of the aggregate tax credit would be applied to the property tax imposed on the qualifying property for each of five consecutive taxable years. To qualify for the credit, the energy device must be placed in service in the building on or after January 1, 2008. The credit may not be granted for any energy device first placed in service on or after January 1, 2012.

Under The Maryland Annotated Code, Tax-Property Article, Section 9-203, the Mayor and City Council of Baltimore is authorized to grant by law a property tax credit for structures that use certain energy devices to heat, cool or provide hot water for use in the structure. Pursuant to the State law, the City Council may provide in the ordinance for the amount of the credit, the duration of the credit but not to exceed three years, and the definitions for “solar energy device”, “geothermal energy device”, and “qualifying energy device” as well any other provisions necessary to carry out the authorized credit.

The Law Department has concerns about the three year duration limit provided in state law. The State enabling legislation for this credit states that the Mayor and City Council may provide for the duration of the credit, not exceeding three years. Md. Tax Property Art. , Section 9-203. There has been some debate regarding whether this language means that the after three years no more credits may be granted or that a credit once granted may not be paid out over more than a three year period. The Law Department has contacted the policy analyst for the State Department of Legislative Affairs

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responsible for drafting and reviewing State tax law to get advice on how to interpret this language. In their opinion, local legislation can not provide for a pay out of the tax credit over a period longer than three years. Even if the interpretation meant that the credit could not be available for more than a three year period, Bill 58 would be in violation of the State enabling legislation. Section 10-16(B) provides that the credit is available for energy devices first placed in service on or after January 1, 2008. Section 10-16(E) provides that the credit can not be granted for energy devices placed in service on or after January 1, 2012. This is a four year period.

Accordingly, although the City Council is authorized by State law to enact the tax credit for energy devices, the provisions of the Bill 08-0058 are not consistent the duration requirements of the State enabling legislation. The Law Department therefore does not approve City Council Bill 08-0058 for form and legal sufficiency.

Sincerely yours,



Elena R. DiPietro
Assistant Solicitor

cc: Honorable James Kraft
Angela Gibson, City Council Liaison
George Nilson, City Solicitor
Linda C. Barclay, Chief Solicitor
Deepa Bhattacharyya, Assistant Solicitor