

CITY OF BALTIMORE

SHEILA DIXON, Mayor

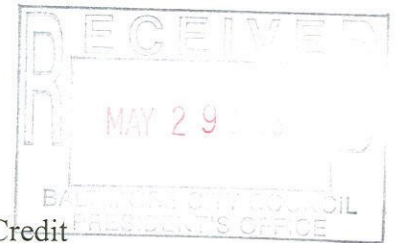


DEPARTMENT OF LAW

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

May 28, 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 08-0062 – Homestead Property Tax Credit

Dear President and Members

You have requested the advice of the Law Department regarding City Council Bill 08-0062. City Council Bill 62 prohibits a person from receiving the benefit of a homestead property tax credit on more than one dwelling. The bill also provides for civil and criminal penalties for violations of the one credit limit. The civil penalty provision requires that there be notice and an opportunity to be heard and calls for the violator to be liable to the City for an amount equal to the full amount of all homestead tax credits received on all dwellings in the City for the tax year in which notice is given and the three preceding years. In addition, a civil penalty is imposed in an amount equal to twice the amount of the credits for those years. These amounts will become liens on the property until paid. The bill also provides for a criminal penalty in the amount of \$1000 and/or 90 days imprisonment.

The City's authority to provide for the Homestead Tax credit is found in the Maryland Ann. Code, Tax Property Art. Sec. 9-105. Section 9-105 dictates eligibility for the credit, the method for calculating the credit and mandates that local government shall grant this credit to eligible property owners. The law provides that local governments shall by law set the homestead credit percentage for the taxable year on or before November 15, that the percentage shall be between 100% and 110% and that local governments shall notify the State when it sets the percentage. The law also includes other specific conditions for the granting of the tax credit.

Section 9-105(d)(3) states that "a homeowner may claim a property tax credit under this section for only one dwelling. Section 9-105 does not provide for a penalty for violating the requirements of that section. Section 14-702 of the Tax-Property Art. does state that a local government may set by law a tax penalty against overdue county total tax liability. Section 14-702(b) provides that a tax penalty may be set only on overdue tax liability imposed under certain provisions of Title 10 of the Tax –Property Article. Section 14-1004 provides for a penalty for willfully providing false information of up to \$5000 or imprisonment not exceeding 18 months or both. In addition to those penalties, State law also provides that failure to pay taxes will result in



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interest charges, liens on the property and subject the property to the tax sale process.

The Tax Property Article of the Maryland Ann. Code provides for an extensive and comprehensive scheme for the assessment, payment and collection of property taxes. Local jurisdictions are given specific authority under that scheme to provide by local law for certain aspects of the process. There is no authorization under State law for providing for civil and criminal penalties for claiming a tax credit to which a person is not entitled. The State has clearly preempted local legislation in the area of property tax credits by its comprehensive scheme for the provision of property tax credits. Baltimore City can not enact property tax credits without the authorization of State law. The provision of property tax credits is not an area for which State law has given general authority to local jurisdictions and authority to enact laws regarding property tax credits is only granted as specifically provided in State law. The power to provide for penalties for violation of tax credit law is not an area for which specific authority has been granted. Local jurisdictions are therefore preempted by State law from enacting laws in this area. See Allied Vending, Inc v. City of Bowie, 332 Md. 279 (1993).

In addition to the preemption issue, under Article II, Section 48, civil and criminal penalties for violations of City Code provisions may not exceed \$1000. The civil penalty provided for in Section 10-1(c)(1) of the bill provides that the civil penalty shall equal twice the amount of credits for a 4 year period. This could exceed the \$1000 Charter limitation. The Law Department, therefore, does not approve City Council Bill 08-0062 for form and legal sufficiency.

Sincerely yours,



Elena R. DiPietro
Assistant Solicitor

cc: Honorable Mary Pat Clarke
Angela Gibson, City Council Liaison
George A. Nilson, City Solicitor
Linda C. Barclay, Chief Solicitor
Deepa Bhattacharyya, Assistant Solicitor
Ashlea H. Brown, Assistant Solicitor