



Kathy Strom, *Mayor*  
Patricia Burda, *Vice Mayor*  
Al Lang, *Secretary*  
Vicky Taplin, *Treasurer*  
John Bickerman, *Community Liaison*

April 22, 2015

**Via email:** [councilmember.navarro@montgomerycountymd.gov](mailto:councilmember.navarro@montgomerycountymd.gov)  
[councilmember.riemer@montgomerycountymd.gov](mailto:councilmember.riemer@montgomerycountymd.gov)  
[councilmember.katz@montgomerycountymd.gov](mailto:councilmember.katz@montgomerycountymd.gov)

Ms. Nancy Navarro, Council member/Committee Chair  
Mr. Hans Riemer, Council/Committee member  
Mr. Sidney Katz, Council/Committee member  
Government Operations and Fiscal Policy Committee  
100 Maryland Ave  
Rockville, Maryland 20850

**Re: Town of Chevy Chase Municipal Tax Duplication Reimbursement**

Dear Ms. Navarro, Mr. Riemer, and Mr. Katz:

On Friday, April 17, 2015, the Town of Chevy Chase (the "Town") was notified by email from Jacob Sesker, Senior Legislative Analyst, that he submitted a Memorandum dated April 15, 2015 to the Government Operations and Fiscal Policy Committee (the "GO Committee"), for consideration at the GO Committee's meeting on Monday, April 20, 2015. In his Memorandum, Mr. Sesker recommends eliminating the previously budgeted amount of \$130,297 to be paid to the Town by the County as municipal tax duplication reimbursement for fiscal year 2016.

The Town brought the late notice to Ms. Navarro's attention and asked that the GO Committee table consideration of the Memorandum until such time as the Town has had a full and fair opportunity to review the recommendation and provide comments. The discussion was postponed until the GO Committee's meeting on April 23, 2014. We thank Ms. Navarro for the additional time to submit comments. For the reasons set forth below, the Town requests that the GO Committee reject the recommendation.

The Town contends that the recommendation is ill-timed, inappropriate, and violates the procedure required by State law. Also, the argument purportedly supporting the recommendation is flawed. Contrary to the argument presented in the Memorandum, the reimbursement due to the Town under County law is not dependent on whether the Town assesses a property tax.

**The Recommendation is Imprudently Timed.** The Town was advised by email dated March 20, 2015 (attached) that \$130,297 would be paid by the County to the Town for municipal tax duplication for FY16. The Town relied on this representation in preparing its FY16 budget. The

Town's draft budget has been introduced and scheduled for a public hearing to be held on Tuesday, May 5, 2015. Pursuant to the Town Charter, the Town is obligated to hold a hearing on its proposed budget on the first Tuesday in May of every year (Town Charter, Section 503). Sufficient time is now not available to amend the budget and issue a new public notice before that deadline.

Moreover, as things stand now, the Town would not know whether its budget requires amendment until after the County budget is approved in June. Mr. Sesker's last-minute recommendation threatens to wreak havoc on the Town's Charter-mandated budgeting process.

**The Required Procedure Under State Law has not been Followed.** Under State law, if a municipal corporation "performs services or programs instead of similar county services or programs, the governing body of the county shall grant a tax setoff to the municipal corporation" (Md. Code, Tax Property Article, Section 6-305(c)). According to said law, the County must provide a "Statement of Intent" to the Town indicating the proposed annual "tax setoff" (Id. at Section 6-305(h)(1)). That Statement of Intent is to be provided "at or before the time the proposed county budget is released to the public" (Id.).

The State framework thereby allows a municipality adequate time to contest a proposal, early in the budgeting process, before it has adopted its own budget. The subject recommendation would have the County impermissibly rescind its Statement of Intent, after the Town has relied upon it in creating the Town budget.

**A Property Tax is not a Condition of Reimbursement under County Law.** Tax duplication is governed by State and County law. In addition to the mandatory requirement to provide a "tax offset" according to State law (as noted above), County law also provides that the County will "reimburse municipalities within the County for those public services provided by the municipalities which would otherwise be provided by the county government" (County Code, Section 30A-1). The County law was enacted approximately two years before the State law.

Mr. Sesker relies upon a memorandum, dated December 5, 2014, from Josh Hamlin, Legislative Attorney, to support his recommendation. Mr. Hamlin argues that the State tax duplication law is meant to address the "tax inequity arising from municipal residents paying property tax both to the County and the municipality" (emphasis added). State law expressly provides that, in setting the County property tax rate, the County must consider "the extent that the similar services and programs are funded by property tax revenues." (Tax Prop. Art., Sec. 6-305(d)(2) (emphasis added)). Thus, Mr. Hamlin argues that the State law requiring a "tax setoff" is limited to consideration of what property tax is paid, and income tax revenue is to be excluded.

Mr. Sesker and Mr. Hamlin contend that the same argument applies to the County reimbursement law. However, County law does not expressly limit consideration to property tax revenue. Rather, County law provides that "tax revenues," generally, are to be considered:

"Municipal public services shall qualify for county reimbursement if the following conditions are met: (1) The municipality provides the service to its residents and taxpayers, (2) the service would be provided by the county if it were not provided by the municipality, (3) the service is not actually provided by the county within the municipality and (4) the comparable county service is funded from tax revenues

derived partially from taxpayers in the participating municipality” (Montgomery County Code, Section 30A-2) (emphasis added).

Mr. Hamlin notes that the County law has been administered through various implementing resolutions. One such resolution (No. 9-1752 (1982)) provides that the basis for the reimbursement “should be based on the County’s actual, net, property tax funded expenditures for a given service.” Accordingly, Mr. Hamlin notes that, “since 1982, the Program has been implemented under the premise that the Program is a ‘property tax duplication’ reimbursement program...”. He points to several sources of legislative history to support the implementation. This argument is repeated in Mr. Sesker’s recommendation.

Legislative history should only be consulted if the law is ambiguous. Here, the law is clear. The phrases “funded by property tax revenues,” as used in the State law, and “funded from tax revenues,” as used in the County law, mean different things. Tax revenues include all sources of revenue, including income taxes.

In any event, the legislative history argument is not convincing. In fact, it conflicts with the conclusion reached in 2002 by Associate County Attorney, Betty Ferber. Ms. Ferber noted that the legislative history expressly reflects that income tax revenues are to be considered in calculating the “estimated tax duplication or overlap” and reimbursement owed to the municipalities (Memorandum, dated August 30, 2002, p. 4). Ms. Ferber concluded that based on the legislative history and language of the County law (which “makes no specific reference to property taxes”), the County reimbursement cannot “be limited to the portion attributed to the property tax...” (Id., ppgs. 9, 11).

Under County law, the Town should be reimbursed by the County for those public services provided by the Town that would otherwise be provided by the County, without regard to whether a property tax is imposed by the Town.

For the above reasons, the Town requests that the GO Committee reject the recommendation to eliminate the municipal tax duplication reimbursement for the Town for FY16.

Thank you for your consideration.

Sincerely,



Kathy Strom  
Mayor

Enclosure

cc: Roger Berliner, Council member (via email)  
Jacob Sesker, Senior Legislative Analyst (via email)  
Todd Hoffman, Town Manager (via email)  
Ronald M. Bolt, Town Attorney (via email)

## Todd Hoffman

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**From:** Joel Happy  
**Sent:** Friday, April 17, 2015 4:10 PM  
**To:** Todd Hoffman  
**Subject:** FW: FY16 Tax Duplication

Joel Happy  
Town Clerk & Finance Officer  
Tel. 301-654-7144  
Fax 301-718-9631



[www.townofchevyCHASE.org](http://www.townofchevyCHASE.org)

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**From:** Meier, Bruce [<mailto:Bruce.Meier@montgomerycountymd.gov>]  
**Sent:** Friday, March 20, 2015 4:08 PM  
**To:** Joel Happy  
**Cc:** Kirkland, Bonnie  
**Subject:** Re: FY16 Tax Duplication

Sorry for my misunderstanding. The Executive has recommended the same distributions next year as this year. See [https://reports.data.montgomerycountymd.gov/reports/BB\\_FY16\\_REC/NDA\\_PROGRAMS](https://reports.data.montgomerycountymd.gov/reports/BB_FY16_REC/NDA_PROGRAMS).

## Non-Departmental Accounts Programs FY16 Recommended

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**From:** Joel Happy <[jhappy@townofchevyCHASE.org](mailto:jhappy@townofchevyCHASE.org)>  
**Sent:** Friday, March 20, 2015 1:09 PM  
**To:** Meier, Bruce  
**Cc:** Kirkland, Bonnie  
**Subject:** RE: FY16 Tax Duplication

Hi Bruce,

We received the FY15 distribution. I am inquiring about FY16, the one we are supposed to receive this coming summer.

Joel Happy  
Town Clerk & Finance Officer  
Tel. 301-654-7144