

Testimony before the Maryland State House of Delegates Ways and Means Committee

## **HB 158**

Property Tax – Homeowners’ Property Tax Credit – Calculation and Refunds

Requesting a FAVORABLE report with suggested amendments

Testimony by Louis Wilen, a resident of Olney, Maryland

January 26, 2021

Dear Madam Chair and Members of the Committee:

HB 158 seeks to aid moderate and low-income homeowners by requiring partial refunds of property tax that was improperly collected because of a calculation error by the State Department of Assessments and Taxation (SDAT). An Office of Legislative Audits (OLA) investigation revealed that the calculation error has been occurring since 2005 and possibly earlier. The error affects thousands of homeowners throughout the State, primarily in Baltimore City and Montgomery County, and possibly in other counties. Any homeowner who received the Homeowners’ Tax Credit (HTC) and at least one other property tax credit (other than the Homestead Credit) is likely to have been impacted.

Please note that HB158 requires refunds of only the State portion of property tax credits that were improperly calculated. The bill does not give the counties and municipalities even the *option* to refund improperly calculated supplemental property tax credits, such as senior tax credits. Please consider amending the bill so that counties and municipalities are at least given the *option* to refund improperly calculated supplemental property tax credits.

Furthermore, the bill requires refunds of property tax that was improperly collected only since FY2018. While it may be convenient for the state to issue refunds covering only the most recent years, a refund covering this short period will leave many of the homeowners injured since the miscalculation has been taking place since at least 2005. Please consider amending the bill to require refunds of improperly collected property taxes back to at least 2005.

Please also consider that it would have been almost impossible for an HTC recipient to discover the calculation error on their own because the amount of the HTC is calculated entirely by SDAT. The calculations are normally invisible to homeowners. (It's quite a different process from calculating income tax, where all calculations are fully visible to taxpayers on their tax returns so errors can be readily detected.) The OLA deserves a great deal of credit for their auditing work on this issue. Since the error was well-hidden, it is inappropriate for taxpayers to be harmed at all by this error.

Finally, from all indications, the calculation error was not a "programming error" or "processing error," but was instead the result of a long-standing (and incorrect) policy decision by SDAT. I've attached a Maryland Tax Court Order from May 2011, *Crandon v. SDAT*, that illustrates the extent to which SDAT went to defend their policy. In the Order, please note that SDAT's experienced attorney improperly construed the meaning of the phrase "property tax imposed" in the Property Tax Code to steamroll elderly *pro se* appellant Ms. Crandon in Tax Court and convince the court to rule in favor of SDAT. In fact, the term "property tax imposed" is used similarly in the description of every property tax credit. If SDAT's (and the court's) interpretation of the use of "property tax imposed" in the HTC law had been correct, every tax credit would be subtracted from every other tax credit, leading to a final credit calculation of zero. The OLA's findings and common sense make it clear that the legislature never intended to issue property tax credits, then zero them out by recursively subtracting them from all other property tax credits.

Thank you for taking time to hear my testimony and consider the amendments I have suggested. I ask that you issue a FAVORABLE report on HB158.

**2016 HOMEOWNERS' TAX CREDIT WORKSHEET**

Example of an HTC worksheet from SDAT. This is **not** normally provided to the homeowner by SDAT. It was obtained by special request.

**STATE HOMEOWNERS' TAX CREDIT**

1. TAX CLASS / ASSESSMENT (MAX \$300,000)		300,000
2. TAX RATE (FROM TAX RATE TABLE FOR TAX CLASS)	2.	x1.1502
3. TAXES SUBJECT TO STATE HTC ( 1 X 2 )	3.	3,450.60
	county tax credit	-692
		2,758.60
4. STATE LIABILITY (Based on income of \$27,637)	4.	-1467.33
5. STATE HTC ( 3 - 4 )	5.	<b>1,291.27</b>

**MONTGOMERY COUNTY HOMEOWNERS' TAX CREDIT**

6. TAX CLASS / ASSESSMENT (MAX \$300,000)	6.	300,000
7. TAX RATE (WITHOUT STATE AND/OR MUNICIPAL RATE)	7.	1.0382
8. TAX SUBJECT TO COUNTY CREDIT ( 6 X 7 )	8.	3,114.60
	county tax credit	-692
		2,422.60
9. COUNTY LIABILITY (Based on income of \$27,637)	9.	-201.85
10. TOTAL CREDIT BEFORE STATE CREDIT IS DEDUCTED ( 8 - 9 )	10.	2,220.75
11. STATE HTC (5)	11.	-1,291.27
12. MONTGOMERY COUNTY HTC ( 10 - 11 )	12.	<b>929.48</b>

13. MONTGOMERY COUNTY SENIOR TAX CREDIT (5 + 12 X 50%)	2,220.75 X 50% =	<b>1,110.38</b>
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**TOTAL HOMEOWNERS' TAX CREDIT**  
(5 + 12 + 13)

**3,331.13**

IN THE MARYLAND TAX COURT

CAROLE CRANDON

Petitioner

v.

STATE DEPARTMENT OF  
ASSESSMENTS AND TAXATION

Respondent

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\*  
\*  
\*  
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Case No. 10-MI-MO-1245 (1-3)

ORDER

THIS MATTER, having come before this Honorable Court for hearing on May 3, 2011, and the parties having had an opportunity to be heard, it is this *24<sup>th</sup>* day of *May*, 2011, by the Maryland Tax Court,

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ORDERED, that the Petitioner shall repay the Respondent \$5855.30 (the recoupment amount) for improperly granted homeowner's tax credits relative to the 2007, 2008 and 2009 taxable years. The Petitioner received historic preservation tax credits for those years, which reduced the "property tax imposed" on her dwelling under Tax-Property Article, § 9-104(g) and caused her to be ineligible for said homeowner's tax credits, and it is further;

ORDERED, that the Petitioner be allowed to repay the recoupment amount by entering into a Repayment Agreement with the Respondent, and it is further;

ORDERED, that any recoupment amount received by Respondent from Montgomery County must be returned, and it is further;

ORDERED, that any recoupment amount received by Montgomery County from the Petitioner's mortgage company must be returned, and it is further;

ORDERED, that the Petitioner is not responsible to Montgomery County for any penalties or interest in conjunction with the repayment.

CC: Carole Crandon  
David M. Lyon, Esq.  
Kent Finkelsen, Administrator

**CERTIFIED TRUE COPY**  
**TEST: John T. Hearn, Clerk**

**NOTICE:** You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.

Relevant sections of the OLA Audit Report dated October 2020

Automated and Manual Processing Errors in Calculating Certain HTC's

DAT improperly calculated HTC's in at least two jurisdictions (Montgomery County and Baltimore City) resulting in thousands of homeowners paying excessive property tax amounts. DAT administers the State HTC and certain supplemental credits awarded to eligible homeowners by their local jurisdictions, such as Montgomery County's supplemental tax credit for senior citizens 65 or older with limited incomes.

- DAT's automated system improperly deducted the income tax offset credit (ITOC) administered by Montgomery County from homeowners' State and County real property tax liabilities, resulting in the HTC's awarded to homeowners in Montgomery County being improperly reduced.<sup>2</sup> Specifically, individual homeowners under the age of 65 had their State and County HTC's improperly reduced by amounts up to a total of \$692, and homeowners at least 65 years old had their HTC's reduced by amounts up to a total of \$1,038<sup>3</sup>. Based on our analysis of HTC applications processed in DAT's automated system for Montgomery County residents in fiscal year 2019, the improper reduction of homeowners' tax liabilities resulted in reduced HTC's awarded to 5,388 applicants totaling \$4.4 million. We determined that, based on the automated system's programming for Montgomery County, DAT improperly calculated HTC's dating back to at least 2005 in the same manner. We could not readily determine the amount by which HTC's were improperly reduced for years prior to fiscal year 2019.

**Example of Impact of Incorrect DAT Calculation**

	<b>OLA Calculation</b>	<b>DAT Calculation</b>
1 Tax liability (TL)	\$ 3,274	\$ 3,274
2 County ITOC	N/A	692
3 TL Used for HTC (1-2)	3,274	2,582
4 Max Allowed Based on Income	1,610	1,610
5 Calculated HTC (3-4)	1,664	972
6 Homeowner Tax Liability (1-5)*	\$ 1,610	\$ 2,302
Difference (OLA-SDAT)	\$	(692)

\*Excludes other taxes and fees on the tax bill

- A similar condition was noted with HTC's manually processed by DAT employees. Specifically, our test of 22 manually calculated HTC's for homeowners that received property credits administered by Montgomery County and 3 other jurisdictions disclosed that DAT employees had improperly deducted these credits from the tax liabilities of 13 homeowners from 2 jurisdictions (Montgomery and Baltimore City). It appears that the manual calculations mirrored those programmed into the automated system for Montgomery County. Consequently, the HTC's awarded to these 13 homeowners were improperly reduced by \$6,500.

DAT received advice from its legal counsel on January 23, 2019 that confirmed our determination that DAT's HTC methodology commented upon above was incorrect.

<sup>2</sup> Since HTC's are calculated based on real property tax liabilities, the improper calculation resulted in too low of a liability, which resulted in a too low of a credit.

<sup>3</sup> Montgomery County homeowners that were at least 65 years old were eligible to receive a supplemental tax credit equal to half of their State HTC amount.

## Agency Response Form

### Finding 5

DAT did not ensure HTC's were properly calculated. As a result, HTC's awarded to thousands of homeowners in certain jurisdictions were improperly reduced by at least \$4.4 million.

We recommend that DAT

- a. establish procedures to periodically review the programming of its automated system to ensure that HTC's for all jurisdictions are being processed accurately and in accordance with the law;
- b. segregate duties over manually processed HTC's and ensure they are properly calculated, documented, and supported;
- c. comply with advice of legal counsel and discontinue the practice of deducting other tax credits from applicants' total property tax liabilities, except as allowed by State law; and
- d. consult with legal counsel on how to proceed regarding any refunds resulting from the HTC miscalculations including the \$4.4 million noted above.

<b>Agency Response</b>	
<b>Analysis</b>	
Please provide additional comments as deemed necessary.	SDAT disagrees with the sentiment of impropriety in the statement "HTC's awarded to thousands of homeowners in certain jurisdictions were improperly reduced by at least \$4.4 million." Before OLA began their audit, SDAT made a policy determination that increased the amount of tax credits received by certain jurisdictions in future years. Subsequent conversations with SDAT's Assistant Attorney General confirmed that this is the appropriate course of action moving forward, but the Department does not feel as though prior year calculations were inaccurate as they were consistent with the Department's practice at the time and implicitly upheld by PTAAB and Maryland Tax Court decisions.

**Auditor's Comment:** DAT's statement that the PTAAB and the Maryland Tax Court "implicitly upheld" the specific calculation method we addressed in our report is not consistent with its position during our audit fieldwork or subsequent to the audit when we discussed the finding with DAT management. Furthermore, the statement is questionable since the specific calculation method we addressed was demonstrably improper, and our assessment that the calculation method was improper was consistent with advice DAT received from its legal counsel in January 2019 as noted in our report.