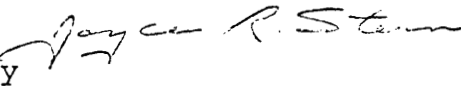
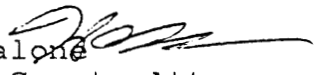


M E M O R A N D U M

March 28, 1991

TO: Michael Faden
Senior Legislative Attorney

VIA: Joyce R. Stern 
County Attorney

FROM: H. Christopher Malone 
Senior Assistant County Attorney

SUBJECT: Bill 72-90, Development Impact Taxes

The provisions of Section 52-56 of the County Code, the development impact tax, conflict with Sections 9-710 through 9-713, Article 24, Annotated Code of Maryland and the decision of the Court of Appeals in Montgomery Co. Council v. Supervisor, 275 Md. 339, 348 (1975).

Section 52-56 indicates that a person may appeal the imposition of the development impact tax to the Maryland Tax Court even though that person has not paid the tax.

Sections 9-710 through 9-713, Article 24, provide that a person may only appeal to the Maryland Tax Court, if that person has paid the tax, and the person's claim for refund has been denied.

The Court in Montgomery Co. Council v. Supervisor held that the Tax Court is an administrative agency possessing only the powers specifically conferred by State statute. Further, the Court held that the State statute creating the Tax Court (Section 10-507, Article 41) and separating it from the State Tax Commission was not a general grant of jurisdiction over all tax matters. See also Shell Oil Co. v. Supervisor, 276 Md. 36, 38 (1975).

The powers of the Tax Court are measured and limited by the statute creating it. Boyd v. Supervisor of Assessments, 57 Md. App. 603, 608 (1984), LaBelle v. State Tax Commission, 217 Md. 443, 452 (1958). If the conditions precedent are not met and complied with the Tax Court has no jurisdiction. Boyd v. Supervisor, supra at 608, Comptroller v. Brand Iron, Inc., 65 Md. App. 207, 212 (1985). The Tax Court cannot enlarge its own jurisdiction, nor can jurisdiction be conferred on it by the parties or by consent. Boyd v. Supervisor, supra at 608, Sigma Repro. Health Cen. v. State, 297 Md. 660, 664 (1983). If the Tax Court lacks subject matter jurisdiction its purported decision is a nullity. Boyd, supra at 608-609.

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The jurisdiction of the Maryland Tax Court is specifically set forth in various statutes. Mont. Co. Council v. Supervisor, supra at 348 (1975), Shell Oil v. Supervisor, supra at 38. The Tax-Property Article authorizes the Tax Court to review certain administrative decisions with respect to the assessment and taxation of property, Md-Nat'l Cap. P & P Com. v. Wash. Nat'l Arena, 282 Md. 588, 596-597 (1978), Montgomery County Council v. Supervisor, supra. Sections 9-710 through 9-713, Article 24, authorize the Tax Court to review claims for refund of taxes, fees and charges erroneously paid. White v. Prince George's Co., 282 Md. 641, 647 (1978). Other provisions of the Maryland Code authorize the Tax Court to specifically review decisions with respect to certain taxes. Each appeal to the Tax Court for a particular type of tax must be specifically authorized by a State statute.

Sections 9-710 through 9-713, Article 24 are a special statutory remedy providing for a refund of taxes which is exclusive. White v. Prince George's Co., supra at 647. Nordheimer v. Montgomery County, 307 Md. 85, 97 (1986), Apostol v. Anne Arundel County, 288 Md. 667, 672-673 (1980). Once a person voluntarily pays a tax, that person must pursue the exclusive statutory remedy and a common law or declaratory judgment action will not lie to challenge the validity of the tax. Potomac Elec. Power v. P. G. County, 298 Md. 185, 189 (1983), Apostol, supra at 672-673. Where a person has not paid the tax, that person may pursue a common law or declaratory judgment action in the Circuit Court. Nordheimer, supra at 97. A person who has posted a bond or other surety under the development impact tax may pursue an action in the Circuit Court.

The County Code cannot expand the jurisdiction of the Tax Court beyond that specified by State statute. Public general laws specifying the jurisdiction of the Tax Court override any inconsistent provisions of the County Code. Klein v. Colonial Pipeline Co., 285 Md. 76, 83 (1979), Wilson v. Bd. of Sup. of Elections, 273 Md. 296, 301 (1974).

We have prepared amendments to Sections 52-49, 52-50, and 52-56 of the Code to bring them into compliance with the law. (Encl.).

1101.HCM:pb
Attachment

cc: Glenn Orlin, Legislative Analyst