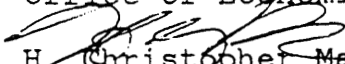


M E M O R A N D U M

May 21, 1992

TO: Jon A. Gerson, Director  
Office of Economic Development

FROM:  ~~H. Christopher Malone~~  
Senior Assistant County Attorney

SUBJECT: Construction Excise Tax - Sections 52-60 through  
52-64, County Code

You have requested our advice with respect to a letter from David E. Schutt of Mulligan/Griffin & Associates, Inc. regarding the construction excise tax. Mr. Schutt states that he believes that the tax is payable whether or not the permit is ultimately issued and whether or not construction actually occurs.

The tax provides that any person who proposes to build or add to any building must pay an excise tax on the act of engaging in construction. Section 52-60(a)(1). The rate of tax is based on the gross floor area constructed. Section 52-60(b). Liability for the tax accrues and the tax is payable when a person files an application for a building permit. Section 52-60(a)(1). However a taxpayer may elect to defer payment by filing a deferral request. Section 52-60(a)(2). The owner and taxpayer must sign the deferral request and accept the taxpayer's liability for the tax and a lien on the real property. Section 52-60(a)(2). If payment is deferred, the tax must be paid before issuance of a use and occupancy permit. Section 52-63.

The law provides that liability for the tax accrues and the tax is payable when a person files an application for a building permit. However, the taxpayer can defer payment until issuance of the occupancy permit. Contrary to Mr. Schutt's assertion, the tax is payable only if the permit is issued and if the construction takes place.

An application for a permit is deemed abandoned six months after filing, unless the application has been diligently prosecuted, a permit has been issued or an extension has been granted. Sec. 8-24(i), County Code. Any liability for the tax

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would end and any lien would terminate if the application was abandoned.

Mr. Schutt also claims that if the building design is changed after the filing of the application a second tax would be due on the change. Amendments to applications can be made at any time. Section 8-24(h), County Code. An applicant could amend the application and change the design. In that event, the applicant would pay the tax only on the final amended application and building permit, and would not become liable for a second tax.

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92.02122

cc: Robert Catineau, OED  
Ted Graham, DEP  
Ann Hoey, DEP