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RAIN TAX

Just Another Way to Dodge Fiscal Responsibility

BY JOHN J. WALTERS

WHEN THE ENVIRONMENTAL PROTECTION AGENCY (EPA) established the Total Maximum Daily Load (TMDL) for pollutants entering the Chesapeake Bay in 2010, few expected it would lead directly to higher taxes for Maryland households. Marylanders have long grown accustomed to all manner of tax, toll, and fee hikes over the past few years — 70 of them since 2007, according to House Minority Whip Kathy Szeliga[1] — but a tax on rain is new even here.

People are, not surprisingly, outraged at the new tax and its questionable implementation.[2] Carroll County has outright refused to enact a tax on stormwater runoff[3] and Del. Patrick McDonough of Baltimore County has begun a campaign against it as well.[4] Nevertheless, 10 counties in Maryland are required by state law to start raising money to combat stormwater runoff, and most have already begun to do so.

While it appears that Maryland is leading the charge in such novel legislation, states and counties all over the nation are being asked to craft bills similar to 2012 Maryland House Bill 987 in response to the EPA mandates for improved water quality. And everyone seems to have a different idea about the best way to tax the rain.

BACKGROUND ON THE BILL

HB 987, part of the Watershed Protection and Restoration Program, was approved by Gov. Martin O'Malley in May 2012. It requires Anne Arundel, Baltimore, Charles, Carroll, Frederick, Harford, Howard, Montgomery and Prince George's counties, as well as Baltimore City, to raise funds to pay for the treatment of stormwater runoff. That runoff picks up fertilizers and other nutrients that promote algae growth, which in turn displaces other forms of aquatic life. The goal of the legislation is to bring Maryland into compliance with the 2010 TMDL limit on those nutrients, thereby improving the water quality of the Chesapeake Bay. The legislation establishes or expands local watershed protection and restoration programs, requiring new revenues from the state and local levels.

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While legislators may insist on calling the rain tax a fee, it is a "Pigouvian tax" — a tax established (at least ostensibly) to mitigate the negative externalities created by a market or activity. This sort of tax forces taxpayers to consider the cost of those externalities and thereby encourages them to economize on the harmful activity. In this case, the activity is development. The more developed an area gets, the more "impervious surfaces" there are, which means more nutrient-gathering runoff and a greater need for extensive water filtration systems.

Impervious surfaces like a concrete driveway or a house's roof create pollution by forcing rainwater directly into overloaded drains that can't possibly keep up with a heavy downpour. The goal isn't to stop the rain — or even really to tax it. Rather, it is to raise money to expand water treatment facilities so that less pollutants end up going directly into the Chesapeake Bay every time there is a thunderstorm.

According to the bill, the 10 counties named above are required to enact and implement an annual fee on the impervious surfaces that a property owner has, very much like an additional property tax. Each county is free to decide what its leaders think is a fair fee, and so far there has been significant disagreement.[5] Some counties want to charge a standard fee for each residence (thereby dampening the useful disincentives of a Pigouvian tax); others want an amount that varies with the amount of impervious surfaces. Frederick and Carroll counties seem not to want to charge anything at all.

Outside of Maryland, state and county officials seem equally divided over how, and whether, to tax runoff. There are currently stormwater fees being proposed in counties in Illinois[6], Pennsylvania,[7] and Virginia[8] — to name a few. Some of these areas are facing public resistance to the new tax, while others are experiencing public acceptance motivated, perhaps, by a sense of duty to the environment.

THINGS GET COMPLICATED

Although several Maryland counties have already phased in their stormwater fees on private lands, there remains a lot of work to be done for runoff from other lands. It may be fairly simple to create an add-on to the property taxes that private business owners and homeowners already pay, but applying the tax to non-taxpaying nonprofit groups and federally owned property is proving to be problematic. The Department of the Navy, for example, claimed in March 2013 that it is exempt from stormwater fees because of the "Cardin Amendment" to the Clean Water Act (drafted, ironically, by Maryland's junior senator), which generally exempts the federal government from paying stormwater assessments. That amendment is especially harmful in Maryland since so much runoff in the Chesapeake watershed comes from federal lands.

And, of course, there is considerable push-back against the tax from civilians and politicians alike. As early as January 2013, the Commonwealth of Virginia had successfully challenged the EPA in court over whether or not stormwater runoff could even be considered a pollutant.[9] The ruling from U.S. District Judge Liam O'Grady said that "Stormwater runoff is not a pollutant, so the EPA is not authorized to regulate it."

Whatever the eventual fate of the already infamous rain tax, for now Maryland — along with states and counties around the nation — is moving forward with legislation that adds to the nickel-and-diming of taxpayers to which we've grown accustomed. Predictably, Baltimore City is going for the biggest money-grab, prompting Donald C. Fry, president of the Greater Baltimore Committee, to write the following in an op-ed:[10]

> *From the standpoint of Maryland's private sector, the stormwater fee policy as currently constructed runs directly contrary to four of the eight core pillars for business growth and job creation developed by the state's business leaders and economic development experts and compiled by the Greater Baltimore Committee in its report, "Gaining a Competitive Edge."*
>
> *The fee policy is not an example of government partnering with business. It is not streamlined, stable and predictable regulatory policy making. It does not create a fair*

MARYLAND LOCAL JURISDICTION RAIN TAXES
Taxes implemented or proposed, as of July 5, 2013

COUNTY	LEVIED	ERU*	COST TO HOMEOWNERS**	COST TO BUSINESSES	SOURCE
ANNE ARUNDEL	ANNUALLY	2,940 SQ. FT.	$34, $85, OR $170	$85/2,940 SQ. FT.	http://www.aacounty.org/DPW/WPRF.cfm#.UdtSK_nVArV
BALTIMORE CITY	QUARTERLY***	1,050 SQ. FT.	$12, $18, OR $36	$18/ERU	http://cleanwaterbaltimore.org/flyers/Stormwater%20Fee%20Forum%20Presentation.pdf
BALTIMORE COUNTY	ANNUALLY	2,000 SQ. FT.	$21 OR $39	$69/ERU	http://marylandreporter.com/2013/05/29/rain-tax-falls-all-over-the-place-stormwater-fees-uneven-from-a-penny-to-thousands/
CHARLES	ANNUALLY	3,087 SQ. FT.	WILL VARY EACH YEAR.	WILL VARY EACH YEAR.	http://www.charlescountymd.gov/sites/default/files/pgm/planning/2013-12.pdf
CARROLL	NA	NA	NA	NA	http://ccgovernment.carr.org/ccg/plan/swmfee/default.asp
FREDERICK	ANNUALLY	NA	$0.01 FLAT FEE	$0.01 FLAT FEE	http://www.frederickcountymd.gov/documents/6616/6617/StormwaterFee04162013_201304191006167144.pdf
HARFORD	ANNUALLY	500 SQ. FT.	$125 FLAT FEE	$7/ERU	http://www.harfordcountymd.gov/Interests/Index.cfm?ID=10
HOWARD	ANNUALLY	500 SQ. FT.	$15/ERU	$15/ERU	http://livegreenhoward.com/beta/wp-content/uploads/2013/05/hoco_watershedfeefaqs_april2013.pdf
MONTGOMERY	ANNUALLY	2,406 SQ. FT.	$29.17 - $265.20	$88.40/ERU	http://www6.montgomerycountymd.gov/dectmpl.asp?url=/Content/dep/water/wqpc.asp
PRINCE GEORGE'S	ANNUALLY	2456 SQ. FT.	$20.58 FLAT FEE/TAX ACCOUNT + $20.90/ERU		http://aoba-metro.org/news/360/85/Prince-George-s-County-to-Impose-Stormwater-Remediation-Fee.html

*ERU — Equivalent Residential Unit — A measurement of impervious surfaces that determines which "rain tax bracket" a property falls into.
**Cost to Homeowners often depends on the type of residence (e.g. townhouse, detached single family home, etc.) and is generally a fixed rate.
***Baltimore City is the only jurisdiction to assess quarterly, so all costs should be multiplied by four when comparing to other counties.

For more information, see MD's online FAQ: http://www.mde.maryland.gov/programs/marylander/pages/stormwaterfeefaq.aspx

and competitive fee or tax structure. And it most certainly does not steer clear of arbitrarily or disproportionately imposing additional overhead on the business sector.

Surely government in our nation and state can do better.

Fry is right to point out that Baltimore City should rethink its strategy. The purpose of a Pigouvian tax is to encourage a desirable behavior: in this case, sustainable development that creates less runoff pollution. The government wants the per-capita cost of stormwater remediation to be as low as possible. Obviously, that makes urban development (which builds up rather than out) better than suburban development because cities have a smaller ratio of impervious surfaces to residents. By setting the tax rate higher in the cities than in any surrounding counties, Baltimore City is effectively incentivizing further development in the Maryland suburbs and sabotaging its own efforts at improving the Bay — or rejuvenating the city.

A FAMILIAR STORY

Just like when legislators made convincing arguments about being "green" when they pushed for taxes on plastic bags and just like when they trotted out examples of crumbling bridges when they started pushing for raising the gas tax in order to "fund infrastructure," taxpayers have reason to be skeptical about whether Maryland's new rain tax will yield any public benefit. No matter how necessary combating stormwater runoff may be, the public policy questions here are whether the new tax will truly help the environment, whether the tax is the best way to pursue that goal, and whether other public resources already exist that could be used to pursue that goal, but are now being put to lower-value uses. In other words, how good is Maryland's track record when it comes to raising money, using that money for the stated purpose, and then achieving the policy goal?

For an answer, one has only to look at the waste, the misallocations, and the balance transfers from the so-called Transportation Trust Fund. Maryland drivers were told that they need to pay a higher gas tax and other increased taxes and fees in order to generate money to repair roads and bridges and expand highways to accommodate increasing congestion. Instead, 50 percent of the resulting revenue was used to fund low-capacity public transportation (which accounts for only 3 percent of travel in this state) and $1 billion was diverted to pay for non-transportation projects.[11] The rhetoric did not match the reality of the gas tax increase, and there's plenty of reason to expect it won't do so for the rain tax. Instead of pursuing a noble public goal, lawmakers likely are once again treating Maryland taxpayers as an ATM from which they can withdraw money.

CONCLUSION

Despite its apparent environmental pedigree, the rain tax is basically just an additional property tax. In some counties, it will raise taxes by millions of dollars, all in the name of accomplishing a goal that is already under the state or local government's purview. It boils down to a question of priorities — and creativity.

Reducing the pollution level in the Chesapeake Bay is important; arguably more important than many of the programs that our state currently funds. But as illustrated in the recent Maryland Public Policy Institute report *A New Transportation Plan for Maryland*,[12] there are other ways to fund important projects besides simply raising additional revenue. For example, the report recommends that Maryland

> *Create a performance-based system to allocate funds and pick transportation projects according to their contribution to congestion relief. Under such a system every potential transportation investment project would be evaluated by traffic engineers to determine both its potential cost and potential to reduce travel time by a certain amount for a specific number of passengers. Projects including roads, transit, technology, bicycle paths, car pools, and hiking trails would then be ranked by impact on congestion mitigation, and funding would be available only to those at the top of the list until available funds are exhausted.*

The same could be done when selecting green infrastructure projects like storm drains and water filtration systems to ensure that early projects are specifically selected to give Maryland the most bang for the buck. State legislators should also consider public-private partnerships for accomplishing its stormwater goals — just like we're already doing with the Department of Transportation.

Or, if policymakers want to harness the incentives of a Pigouvian tax, they could adopt the rain tax while also cutting spending on low-value government projects and passing the resulting savings on to taxpayers in the form of lower taxes overall. The lower overall taxes would not reduce the environmentally beneficial effects of the Pigouvian tax, and would benefit both Marylanders' wallets and the Chesapeake Bay.

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Much like private businesses don't simply raise their prices whenever they want to buy new equipment or hire new employees, our legislators need to get used to reallocating and streamlining instead of diving deeper into the pockets of Maryland citizens.

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