

**Department of Legislative Services**  
Maryland General Assembly  
2011 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 499

(Delegates Szeliga and A. Miller)

Ways and Means

Budget and Taxation

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**Admissions and Amusement Tax - Exemption - Hot Air Balloons**

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This bill exempts from county and municipal admissions and amusement taxes the gross receipts derived from any charge for admission to or use of a nontethered hot air balloon. Tethered rides will remain subject to local admission and amusement taxes.

The bill takes effect July 1, 2011.

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**Fiscal Summary**

**State Effect:** None.

**Local Effect:** None. The bill codifies recent interpretations of federal law whereby local governments are prohibited from imposing local admission as amusement taxes on the use of a nontethered hot air balloon.

**Small Business Effect:** Minimal.

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**Analysis**

**Current Law:** Local governments are authorized to tax the gross receipts derived from (1) the charge for admission to any place furnishing a performance such as a movie theater or sports stadium; (2) the use or rental of sporting or recreational facilities; (3) the merchandise, refreshments, or services sold or served in connection with entertainment at a nightclub or a room in a hotel, restaurant, hall, or other place where dancing privileges, music, or other entertainment is provided; (4) use of a game of entertainment; and (5) use or rental of recreational or sports equipment.

Local governments may also impose a tax on admission for a reduced charge or at no charge to a place that otherwise charges admission. An admissions and amusement tax may not be imposed by a county in a municipality if that municipality already imposes a similar tax or specifically exempts any gross receipts from the admissions and amusement tax.

Each local government sets its own single tax rate or range of rates. This rate is expressed as a percentage of gross receipts, up to a maximum rate of 10%. The Maryland Stadium Authority (MSA) may impose an admissions and amusement tax at its facilities of up to 8%.

In those instances where gross receipts are subject to both a local and a MSA admissions and amusement tax, the MSA tax takes precedence. MSA imposes the maximum 8% rate at both stadiums at Camden Yards. Therefore, Baltimore City may only impose a maximum 2% admissions and amusement tax on those receipts.

The local admissions and amusement tax rate imposed may be further limited by the State sales and use tax. The maximum tax rate on the gross receipts subject to both the State sales and use tax and the local admissions and amusement tax may not exceed 11%. Therefore, if the 6% State sales and use tax applies to these receipts, the local admissions and amusement tax may not exceed 5%. This limitation on the local tax arises primarily on performances accompanied by some type of food service (*e.g.*, dinner theaters).

Counties, municipalities, and MSA are authorized to classify different types of activities for purposes of the tax, and the rate of tax need not be the same for each type. If a municipal government does not levy a tax, the county tax, if any, applies within the municipality. All counties (with the exception of Caroline County), Baltimore City, and most municipalities impose an admissions and amusement tax.

The following are exempt from the admissions and amusement tax in all counties and municipalities: (1) merchandise, refreshments, or a service sold or served at places where dancing is prohibited and the only entertainment is mechanical music, radio, or television; (2) merchandise, refreshments, or a service from which the gross receipts are used exclusively for a charitable, religious, or educational purpose, a volunteer fire company or nonprofit rescue squad, or a fraternal, service, or veterans' organization; (3) merchandise, refreshments, or a service from which the gross receipts are used exclusively for improvement, maintenance, or operation of an agricultural fair if no net earnings inure to the benefit of any stockholder or member of the association that conducts the fair; (4) concerts and theatrical events of nonprofit groups organized to present annual series of musical concerts and nonprofit cultural organizations that receive direct appropriations of State funds through the Maryland State Arts Council;

(5) admission to live boxing or wrestling matches; (6) the use of bowling alleys; and (7) admission to, or use of, charter fishing boats.

Some additional exemptions specific to certain counties are set out under State law. For example, Calvert County may not charge an admissions and amusement tax on any activity that is also subject to the State sales and use tax. Counties and municipalities are also given authorization to grant exemptions for a few additional activities.

**Background:** In July 2010, the Comptroller of Maryland withdrew an admissions and amusement tax assessment levy against the Friendship Hot Air Balloon Company. Friendship Hot Air Balloon Company had filed suit against the Comptroller claiming that it is not subject to local admissions and amusement taxes under the federal Anti-Head Tax Act (AHTA).

In a recent letter from the General Counsel's Office of the U.S. Department of Transportation to the Up Up Away Hot Air Balloon Company of Baldwin, Maryland, the General Counsel indicated that generally, "an admissions and amusement tax imposed by a locality pursuant to state law on the gross receipts of a hot air balloon operator carrying passengers in air commerce would be preempted by the [federal Anti-Head Tax Act] AHTA." Up Up Away had been assessed local admissions and amusement taxes, but had charged that under AHTA, it was not subject to the admissions and amusement taxes imposed by Baltimore and Howard counties because its hot air balloons are licensed by the Federal Aviation Administration (FAA) and piloted by certified airmen, operated in air commerce, and engaged in the carriage of passengers.

An Internet search indicates that there are four hot air balloon companies operating in Maryland – Up Up Away Hot Air Balloon Company in Baldwin, Friendship Hot Air Balloon Company in West Friendship, Light Flight Balloon, Inc. in Bel Air, and Delmarva Balloon Rides in Chester.

**Exhibit 1** shows county admissions and amusement tax rates for fiscal 2011 and revenues for fiscal 2010.

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**Exhibit 1**  
**County Admissions and Amusement Tax Rates and Revenues**

<b>County</b>	<b>Tax Rate FY 2011</b>	<b>Revenues FY 2010</b>
Allegany	7.5%	\$150,000
Anne Arundel	10.0%	7,890,000
Baltimore City	10.0%	9,100,000
Baltimore	10.0%	7,519,000
Calvert	1.0%	30,000
Caroline	0.0%	0
Carroll	10.0%	275,000
Cecil	6.0%	175,000
Charles	10.0%	932,200
Dorchester	0.5%	3,000
Frederick	5.0%	800,000
Garrett	4.5%	600,000
Harford	5.0%	500,000
Howard	7.5%	2,000,000
Kent	4.5%	20,000
Montgomery	7.0%	2,130,000
Prince George's	10.0%	10,433,600
Queen Anne's	5.0%	220,000
St. Mary's	2.0%	120,000
Somerset	4.0%	25,000
Talbot	5.0%	50,000
Washington	5.0%	375,000
Wicomico	6.0%	88,500
Worcester	3.0%	560,000
<b>Total</b>		<b>\$43,996,300</b>

Source: Maryland Association of Counties; Department of Legislative Services

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Comptroller's Office, Maryland Association of Counties, Maryland Municipal League, Department of Legislative Services

**Fiscal Note History:** First Reader - March 2, 2011  
mm/hlb Revised - House Third Reader - March 28, 2011

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