

MM&C Litigators Successfully Challenge Montgomery County's "Rain Tax"

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Miller, Miller & Canby litigation attorneys **James L. Thompson** and **Diane E. Feuerherd** successfully challenged Montgomery County's calculation of the Water Quality Protection Charge, also known as the "rain tax", on behalf of a commercial property owner with multiple

properties in the area.

The rain tax, which is administered by the County's Department of Environmental Protection ("DEP"), is a new line item included on the property tax bills of a majority of commercial property owners. In 2012, the Maryland General Assembly enacted legislation directing the County to collect the rain tax in an amount that is based on the County's share of stormwater management services provided to the property, but also to credit the property owner for the investment in private stormwater management facilities on the property.

In the case of Miller, Miller & Canby's client, the County assessed the rain tax, without regard to this property owner's long track record of private stormwater management and compliance. Even though the property's two regional ponds entitled the owner to a minimum credit of 50%, the County assessed a penalty, cutting the property owner's credit in half, because the owner failed to submit cost prohibitive engineering calculations with its credit application - a DEP requirement not authorized by the County statutory or regulatory provisions. The Board of Appeals for Montgomery County, ruling in favor of Miller, Miller & Canby's client and ordering that the DEP remove the 50% credit reduction, found "that the County lacked the authority to reduce the Appellant's credit by half for failure to submit these calculations."

Notwithstanding this initial success, Miller, Miller & Canby expects to continue its client's appeal of the inequity of the rain tax and the County's failure to comply with the state law to obtain the full credit against the rain tax for its client.

Miller, Miller & Canby has more than 60 years of tax litigation and trial experience. Our goal is to provide value to clients, which we define as the maximum savings of tax dollars at the earliest possible stage in the appeal process. We are skilled and tenacious advocates, with a proven track record of success for our clients. [Click here](#) to learn more about our litigation practice.