



Bulletin

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LOCAL OPTION PERSONAL EXEMPTIONS

TO: Assessors, Mayors, Selectmen, City/Town Managers, Finance Directors and City/Town Councils

FROM: Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs

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SUBJECT: Local Option Personal Exemptions

This *Bulletin* explains two new local acceptance personal exemptions, Clauses 56 and 57, added to G.L. c. 59, § 5, which sets forth the property exempt from local taxation, by the 2010 Municipal Relief Act (MRA). St. 2010, c. 188, § 42. Clause 56 exempts up to 100 percent of the real and personal property taxes assessed to Massachusetts national guardsmen and reservists for any fiscal year they are deployed overseas. Clause 57 provides a property tax reduction for seniors up to the amount of the “circuit breaker” state income tax credit they received for their domicile. Fiscal year 2012 is the first year the clauses may be implemented.

Questions

Assessors or other local officials with questions about these local options may contact the Division of Local Services’ legal staff at 617-626-2400.

However, we ask that you please not refer taxpayers with questions about their eligibility for these exemptions or the “circuit breaker” credit to the Division. The Division cannot determine a taxpayer’s eligibility for any local tax exemption or state tax credit, or give legal advice to private individuals. Assessors are responsible for providing their taxpayers with customer service and information on property taxes, including these and other exemptions. Customer service on state tax matters, including the “circuit breaker” tax credit, is provided by the Department of Revenue’s Customer Service Call Center at 617-887-MDOR or 800-392-6089 (toll-free in Massachusetts).

Acceptance

Clauses 56 and 57 apply only in communities that accept them. Acceptance is by vote of the community's legislative body, subject to charter. G.L. c. 4, § 4. The exemption will apply in the fiscal year that begins the July 1 after the acceptance vote, unless a later fiscal year is specified in the vote. The following or similar language may be used for the acceptance vote:

VOTED: That the city/ town accept (insert citation), which (insert brief explanation), to be effective beginning in fiscal year (_____).

State Reimbursement

There is no state reimbursement for exemptions granted under Clauses 56 or 57. The full cost is borne by the municipality.

Clause 56

National Guard Members and Military Reservists Deployed Outside United States

If accepted, Clause 56 of G.L. c. 59, § 5 would allow members of the Massachusetts national guard or military reservists who are on active duty to obtain a reduction of all or part of their real and personal property taxes for any fiscal year they are serving in a foreign country.

Assessors may already grant members of the national guard or reservists who incur a financial hardship as a result of being activated to military service, regardless of where they serve, a full or partial exemption of their real and personal property taxes under Clause 18. If accepted, Clause 56 would let the assessors give an exemption for other reasons as well, but only to those guard members and military reservists serving on active duty outside the United States. Like the Clause 18 exemption, however, the Clause 56 exemption is discretionary with the assessors. They establish the eligibility criteria and determine the amount, if any, of relief.

To obtain a reduction of real estate taxes under Clause 56, a guard member or reservist must own the property as of the July 1 beginning of the fiscal year for which the relief is sought. G.L. c. 59, § 5, first paragraph. The guard member or reservist must be the assessed owner of the personal property for that year's taxes to be reduced. G.L. c. 59, § 18.

The taxpayer must also be on active duty, be serving in a foreign country, and meet any other eligibility criteria established by the assessors. Assessors should adopt policies to ensure similarly situated applicants are treated equitably, while maintaining some flexibility to address unique situations. Assessors may grant a full or partial reduction. However, a partial reduction cannot be further increased by local adoption of the additional exemption under St. 1986, c. 73, § 3, or result in a tax of less than 10% of the assessed tax. G.L. c. 59, § 5C.

The taxpayer must apply to the board of assessors each fiscal year for which a reduction is sought. Each year's application is due on or before the due date of the first actual tax installment for the year (the abatement deadline). G.L. c. 59, § 59; also see *Guzman v. Board of Assessors of Oxford*, 24 Mass. App. Ct. 118 (1987). Under federal law, however, some taxpayers may have additional time to apply. See 50 U.S.C. App. 526 (Servicemembers Civil Relief Act). Assessors in communities that accept Clause 56 may develop their own application form. A taxpayer may also apply for the reduction using a regular abatement application (State Tax Form 128). Because of the discretionary nature of Clause 56, the Appellate Tax Board (ATB) does not have jurisdiction to hear a taxpayer's appeal of the assessors' decision on the application. To obtain a review of the decision, the taxpayer would have to bring a civil action in the Superior Court or Supreme Judicial Court. The action must be brought within 60 days of the decision.

Reductions granted in a taxpayer's taxes under Clause 56 are charged to overlay.

Clause 56 expires two years after acceptance unless it is extended by vote of the community's legislative body. Usually a local acceptance statute is in effect until revoked by the community and revocation cannot take place for at least three years after acceptance. See G.L. c. 4, § 4B.

Clause 57 – Seniors Eligible for State Circuit Breaker Tax Credit

If accepted and subject to the assessors' annual allocation of overlay, Clause 57 of G.L. c. 59, § 5 would allow seniors who receive "circuit breaker" tax credits on their Massachusetts state income taxes to obtain a reduction of their real estate taxes up to the amount of their credits.

Under G.L. c. 62, § 6(k), persons 65 or older who meet certain income and other requirements may claim a credit against their Massachusetts personal income taxes for the real estate taxes paid on their domiciles during the state tax year. The credit, known as the "circuit breaker" is the amount of taxes paid that exceeds 10% of the taxpayer's income, up to a maximum credit that is adjusted each year to reflect changes in the cost of living. The credit is refundable, *i.e.*, may be claimed even if the senior does not have a state tax liability and would not otherwise have to file a return for the tax year. For state tax year 2010, the maximum credit is \$970. For additional information on the credit, see *Real Estate Tax Credit for Persons Age 65 and Older (known as the Circuit Breaker Credit)* from the Department of Revenue's *Guide to Personal Income Tax*.

To be eligible for a reduction under Clause 57, a taxpayer must (1) be 65 or older and own and occupy the property as his or her domicile as of the July 1 beginning of the fiscal year for which the relief is sought, and (2) have received a "circuit breaker" credit for property taxes paid on that domicile or another domicile within Massachusetts for the preceding calendar year. Eligible taxpayers may have their property taxes reduced up to the amount of the credit they received. For example, for a fiscal year 2012 reduction, a taxpayer must be at least 65 and own the domicile as of July 1, 2011 and have received the credit against his or her 2010 state income taxes. If eligible, the maximum reduction the taxpayer may receive is the amount of the 2010 credit.

Reductions granted in a taxpayer's taxes under Clause 57 are charged to overlay, but they are subject to the assessors' annual "appropriation," *i.e.*, allocation, of overlay dollars exclusively for the reduction. Assessors should include the amount of their proposed allocation in the estimate of overlay they provide during the annual budget process. Upon setting the tax rate, they should establish (1) the actual allocation for the fiscal year, (2) the reduction eligible taxpayers will receive that year, *e.g.*, 100% or 50% of the taxpayer's prior year circuit breaker credit, or \$500 or the prior year credit, whichever is less, and (3) the method for pro-rating the allowable reduction if the amount allocated is insufficient to provide it to all qualifying applicants. When the assessors have acted on all applications and have determined any potential exemption exposure due to appeals, they should notify the accounting officer that the surplus allocation, if any, is available for general overlay purposes for the year.

As with Clause 56, a taxpayer must apply to the assessors each year, with the application due on the same day as abatement applications for the year. The application may be made using a regular abatement application or an application form developed by the assessors. To appeal the assessors' decision on the application, however, the taxpayer would use the regular abatement appeal process. The appeal would be taken to the ATB (or county commissioners if applicable) within three months of the date the assessors acted on the application, or the date the application was deemed denied, whichever is applicable. G.L. c. 59, §§ 64-65B.

Some seniors who qualify for the reduction under Clause 57 may also qualify for a partial real estate exemption under other clauses of G.L. c. 59, § 5, *e.g.*, as seniors, surviving spouses, blind persons or veterans. Those seniors may not have their property taxes reduced by both that exemption and Clause 57. G.L. c. 59, § 5, first paragraph. Assessors should grant the exemption that provides the taxpayer with the greatest benefit. In addition, a Clause 57 reduction cannot be further increased by local adoption of the additional exemption under St. 1986, c. 73, § 3, or result in a tax of less than 10% of the tax. G.L. c. 59, § 5C.

Seniors who receive a Clause 57 reduction should be aware that it may impact their future eligibility for the circuit breaker credit. Property tax payments for purposes of the credit include amounts paid in the state tax year, adjusted for abatements, exemptions and other reductions received in that year. See *Real Estate Tax Credit for Persons Age 65 and Older (known as the Circuit Breaker Credit)*.

Acceptance of Clause 57 may be revoked, but at least three years must have passed since the acceptance vote to do so. Revocation is also by vote of the community's legislative body, subject to charter. G.L. c. 4, § 4B. The exemption will cease in the fiscal year that begins the July 1 after the revocation vote, unless a later fiscal year is specified in the vote. The following or similar language may be used for the revocation vote:

VOTED: That the city/ town revokes its acceptance of (insert citation), which (insert brief explanation), to be effective beginning in fiscal year (_____).

Notification Requirement

Because the Clause 57 exemption impacts the amount needed to adequately fund overlay each year, the city or town clerk must notify the Municipal Data Management/Technical Assistance Bureau if that exemption is accepted. (See "Notification of Acceptance"). The notice should be submitted as soon as possible after the acceptance. No notification is required if the city or town accepts Clause 56.