

City Code

Sec. 18-54. - Deferral of taxes on real property of certain elderly and disabled persons.

(a)

Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Income shall mean gross income from whatever source derived, including but not limited to social security payments, inheritance, gifts, gains from sale or exchange of assets, proceeds of insurance (other than life insurance), welfare receipts and benefits under the state supplemental retirement system. Income shall not include life insurance benefits or receipts from borrowing or other debt.

Net combined financial worth shall mean the fair market value of all assets, tangible and intangible, legal or equitable, of the owner and the spouse of any owner, less the liabilities of such person, but excluding the value of the dwelling and of the land as provided in subsection (b)(1) of this section. Such term includes but is not limited to the cash surrender value of any life insurance policy owned by such person.

Permanently and totally disabled shall mean unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or deformity which can be expected to result in death or can be expected to last for the duration of such person's life, as certified pursuant to the provisions of paragraph (b)(5) below.

(b)

Deferral for persons over 65 or disabled persons. Payment of real property taxes upon real estate or any portion thereof owned by and occupied as the sole dwelling of a person who is (i) not less than 65 years of age, or (ii) who is less than 65 years of age and who is permanently and totally disabled as defined hereinabove.

Such person is hereafter referred to as the "qualifying owner." A dwelling jointly held by a husband and wife, with no other joint owners, may qualify if either spouse is a qualifying owner and occupies the subject property as his or her sole dwelling. In such case, there shall be no proration of the deferral notwithstanding that one spouse is not a qualifying owner. The deferral here provided shall not apply to any real estate or any portion thereof that is jointly owned and occupied as the sole dwelling of a qualifying owner if the joint owner is not the spouse of the qualifying owner and is not himself or herself a qualifying owner. The deferral here provided is further subject to the following:

(1)

For purposes of this deferral, real property of any qualifying owner includes real property (i) held by a qualifying owner alone or in conjunction with the qualifying owner's spouse as tenant or tenants for life or joint lives, (ii) held in a revocable inter vivos trust over which the qualifying owner or the qualifying owner and his spouse hold the power of revocation, or (iii) held in an irrevocable trust under which a qualifying owner alone or in conjunction with his or her spouse possesses a life estate or an estate for joint lives or enjoys a continuing right of use or support. The term does not include any interest held under a leasehold or term of years.

(2)

The total combined income during the immediately preceding calendar year from all sources of gross income received during the previous calendar year, without regard to whether a tax return is actually filed of (i) qualifying owner(s) of the dwelling who use it as their principal residence, (ii) qualifying owner's relatives who live in the dwelling, and (iii) all non-relatives of the qualifying owner who live in the dwelling except for bona fide tenants or bona fide paid caregivers of the qualifying owner, shall not exceed the greater of \$50,000.00, or the income limits based upon family size for the respective metropolitan statistical area, annually published by the Department of Housing and Urban Development for qualifying for federal housing assistance pursuant to Sec. 235 of the National Housing Act (12 U.S.C. Sec. 1715z). Any amount up to \$10,000.00 of income of each relative who is not the spouse of a qualifying owner living in the dwelling and who does not qualify for the exemption provided by subsection (b)(6) hereof, shall also be excluded from the total combined income calculation. Further, \$5,000.00 of any permanent or temporary disability benefit, from whatever source received by any qualifying owner who uses the property as his or her permanent residence as well as \$10,000.00 of income of a qualifying owner who is permanently disabled, shall be excluded from the total income calculation.

(3)

The net combined financial worth, including the present value of all equitable interests, as of December 31 of the immediately preceding calendar year of the qualifying owner and of the spouse of any qualifying owner, excluding the value of the dwelling and the land, not exceeding ten acres, upon which it is situated shall not exceed \$200,000.00. Without further action of City Council, commencing with tax year 2007 said net combined financial worth limit shall increase annually by an amount equivalent to the percentage increase that has occurred in the Consumer Price Index for All Items for All Urban Consumers (Series Id: CUUR0300SA0, CUUS0300SA0), as published by the United States Department of Labor, Bureau of Labor Statistics, for the 12-month period ending December 31 of the City's fiscal year immediately preceding the affected tax year.

(4)

The qualifying owner claiming such deferral shall file annually with the director of finance of the city, on forms to be supplied by the city, an affidavit setting forth the names of the related persons occupying such real estate and certifying that the total combined net worth, including equitable interests and the combined income from all sources of the persons as specified in subsection (b)(1) of this section does not exceed the limits prescribed in this section. Such affidavit shall be filed not later than December 1 of each year.

(5)

If the applicant for deferral is under 65 years of age, the applicant shall attach to the form supplied pursuant to paragraph (3) above a certification by the Social Security Administration, the Department of Veterans Affairs or the Railroad Retirement Board, or if such person is not eligible for certification by any of these agencies, a sworn affidavit by two medical doctors who are either licensed to practice medicine in the Commonwealth or are military officers on active duty who practice medicine with the United States Armed Forces, to the effect that the person is permanently and totally disabled, as defined in § 58.1-3217 of

the Virginia Code; however, a certification pursuant to 42 U.S.C. § 423(d) by the Social Security Administration so long as the person remains eligible for such Social Security benefits shall be deemed to satisfy such definition in § 58.1-3217 of the Virginia Code. The affidavit of at least one of the doctors shall be based upon a physical examination of the person by such doctor. The affidavit of one of the doctors may be based upon medical information contained in the records of the Civil Service Commission which is relevant to the standards for determining permanent and total disability as defined in § 58.1-3217 of the Virginia Code.

(6)

The director of finance shall make such further inquiry of the persons seeking such deferral, requiring answers under oath, as may be reasonable to determine qualifications therefor as specified herein, including the production of certified tax returns to establish the income or financial worth of any applicant for tax relief.

(7)

Notwithstanding subsection (b)(1) above, if a person qualifies for a deferral under this section, and if the person can prove by clear and convincing evidence that the person's physical or mental health has deteriorated to the point that the only alternative to permanently residing in a hospital, nursing home, convalescent home or other facility for physical or mental care is to have a relative move in and provide care for the person, and if a relative does then move in for that purpose, then none of the income of the relative or of the relative's spouse shall be counted toward the income limit, provided the owner of the residence has not transferred assets in excess of \$10,000.00 without adequate consideration within a three-year period prior to or after the relative moves into such residence.

(8)

Such deferral may be granted for any tax year following the date that the qualifying owner of such dwelling reaches the age of 65 years or becomes permanently and totally disabled. Changes in respect to income, financial worth, ownership of property and other factors occurring during the taxable year for which the affidavit is filed and having the effect of exceeding or violating the limitations and conditions provided herein shall nullify any deferral for the then-current taxable year and the taxable year immediately following; provided, however, that a change of ownership to a spouse who is less than 65 years of age, or not disabled, when such change resulted solely from the death of his or her qualified spouse shall result in a prorated deferral for the then-current taxable year. Such prorated portion shall be determined by multiplying the amount of the deferral by a fraction wherein the number of complete months of the year such property was properly eligible for such deferral is the numerator and that the number 12 is the denominator.

(9)

Upon the termination of deferral by virtue of sale of the property covered by the deferral, by virtue of the death of the last owner thereof who qualifies for deferral, or by virtue of a recovery that no longer causes the owner to be permanently and totally disabled, all taxes theretofore deferred shall become due and payable as hereafter provided. No penalty shall be assessed in relation to such deferred taxes, but interest shall be charged for each tax year or portion thereof during which tax was deferred, which interest, together with all taxes

deferred shall be due and payable in full as hereinafter provided. As of tax year beginning July 1, 2007, interest shall accrue at the rate of two percent per annum during each tax year of deferment. Deferred taxes, together with accrued interest as hereinabove provided shall be due and payable in full as follows: (i) Upon sale of the subject property; and (ii), in the case of death or recovery or other disqualification for further deferral, within one year of such event. Interest charged hereunder shall be accrued as simple interest and shall not be compounded.

(10)

Real estate taxes deferred hereunder shall constitute a lien upon the real estate to which they relate to as if they had been assessed without regard to the deferral; provided, however, that such liens, to the extent they exceed the aggregate of ten percent of the price for which the real estate may be sold, shall be inferior to all liens of record.

(Ord. No. 867, § 12-11, 10-10-91; Ord. No. 20-99, 7-8-99; Ord. No. 02-17, 7-11-02; Ord. No. 05-21, 9-8-05; Ord. No. 07-39, 10-11-07; Ord. No. 11-21, 10-13-11; Ord. No. 12-16, 9-13-12)

State law reference— *Exemption or deferral of taxes on property of certain elderly and handicapped persons, Code of Virginia, § 58.1-3210 et seq.*