



SPONSOR: Rep. K. Williams & Sen. Walsh

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 268
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 14, TITLE 29, AND TITLE 30 OF THE DELAWARE CODE RELATING TO SENIOR PROPERTY TAX.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1917, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions shown by underline as follows:

§ 1917 Collection and deposit of school taxes.

~~(c)(1) If authorized by majority vote of the whole school board of the local school district pursuant to § 6102(q) of Title 29, there shall be allowed a credit against taxation imposed pursuant to this chapter on the valuation of any qualified property. For purposes of this subsection, "qualified property" shall mean property owned and occupied as a dwelling by and as the principal residence of a qualified person. A "qualified person" is a person who, as of June 30 immediately prior to the beginning of the county fiscal year, is of the age of 65 or more. For claimants establishing legal domicile in this State after December 31, 2012, only claimants who, as of June 30 immediately prior to the beginning of the county fiscal year, have been legally domiciled within the State for a period of at least 3 consecutive years are eligible to receive a credit. Mere seasonal or temporary residence within the State, of whatever duration, shall not constitute domicile within the State for the purposes of this section. Absence from this State for a period of 12 months shall be prima facie evidence of abandonment of domicile in this State. The burden of establishing legal domicile within the State shall be upon the claimant. The maximum such credit authorized by vote of local school boards shall be the lesser of:~~

~~a. 50% of such tax remaining after taking into account any exemption pursuant to Title 9 and Title 22 and any tax reduction pursuant to § 6102 of Title 29; or~~

~~b. \$500.~~

~~The receiver of taxes and county treasurer shall apply such credit after any change to the current expense tax rate pursuant to § 6102 of Title 29.~~

~~(2) No credit against taxation on the valuation of real property as provided in this subsection shall be allowed except in accordance with a form of written application prescribed by the Secretary of Finance in consultation with the~~

~~receiver of taxes and county treasurer and provided by the receiver of taxes and county treasurer for use by the claimants under this subsection. Such application shall be filed with and received by the receiver of taxes or county treasurer as follows:~~

~~a. For tax years beginning on or after May 1, 2000, but before May 1, 2001, no later than February 16, 2001.~~

~~b. For all subsequent tax years, no later than April 30 immediately prior to the beginning of that tax year.~~

~~(3) The Secretary of Finance shall have the authority to waive the date of application in the case that an individual is financially disabled defined herein as unable to manage such individual financial affairs by reason of a medically determinable physical or mental impairment (excluding impairment caused by voluntary use of alcohol or unlawful use of a controlled substance as defined in Chapter 47, Title 16) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, but shall not include individuals for whom an individual's spouse, guardian, or any other person is authorized to act on behalf of such individual in financial matters.~~

~~(4)a. Where title to property on which a credit is claimed is held by claimant and another or others, either as tenants in common or as joint tenants, claimant shall not be allowed a credit against that claimant's interest in said property in excess of the assessed valuation of that claimant's proportionate share in said property, which proportionate share, for the purposes of this subsection, shall be deemed to be equal to that of each of the other tenants unless it is shown that the interests in question are not equal, in which event claimant's proportionate share shall be as shown.~~

~~b. Nothing in this subsection shall preclude more than 1 tenant, whether title be held in common or joint tenancy, from claiming a credit against the property so held, but no more than the equivalent of 1 full credit in regard to such property shall be allowed in any year, and in any case in which the claimants cannot agree as to the apportionment thereof, the credit shall be apportioned between or among them in proportion to their interests. Property held by husband and wife as tenants by the entirety shall be deemed wholly owned by each tenant, but not more than 1 credit in regard to such property shall be allowed in any year.~~

~~c. Right to claim a credit under this subsection shall extend to property the title to which is held by a partnership to the extent of the claimant's interest as a partner therein, or by a guardian, trustee, committee, conservator or other fiduciary for any person who would otherwise be entitled to claim a credit under this subsection, but not to property the title to which is held by a corporation.~~

~~d. Right to claim credit under this subsection shall be withdrawn for the subsequent tax year from any taxpayer who has not paid in full such taxpayer's property tax bill by the end of the tax year for which a credit was~~

reported for that taxpayer to the Secretary of Finance by the receiver of taxes and county treasurer. Taxpayers who fail to pay in full their property tax bill by the end of the tax year for which a credit was reported for that taxpayer to the Secretary of Finance by the receiver of taxes and county treasurer may qualify for credits under this subsection in subsequent tax years upon the payment in full of property taxes and penalties owed prior to the beginning of the subsequent tax year.

(5) The Secretary of Finance may, in consultation with the receiver of taxes and county treasurer, promulgate such rules and regulations and prescribe such forms as the Secretary shall deem necessary to implement this subsection. The Secretary may require that any return or other writing required to be filed with respect to the credit allowed under authority of this subsection be signed by the maker of such return or writing under oath or affirmation, subject to the penalties of perjury.

(6) An aggrieved taxpayer may appeal from the disposition of a claim for credit under this subsection in the same manner as provided for appeals from property tax assessments generally.

(7) Whenever the Secretary of Finance shall determine that a credit has been claimed in disregard of the conditions under which such claims may be made and for the Secretary has authorized payment under § 1919(e) or (d) of this title, the Secretary may assess such claimant for the amount of the credit and, unless it is shown that such disregard is due to reasonable cause and not due to wilful neglect, with a penalty of 20% of the credit claimed along with interest at 1% for any month or fraction of a month commencing on the date on which the claim for credit was filed.

Section 2. Amend § 1919, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions shown by underline as follows:

§ 1919 Report of school tax collections and payment of collected taxes.

(c)(1) For tax years beginning on or after May 1, 1999, but before May 1, 2000, each receiver of taxes and county treasurer shall, in accordance with rules and deadlines established by the Secretary of Finance, report to the Secretary of Finance the amount of credits allowed under § 1917(c) for the current tax year. Credits shall be allowed and reported to the Secretary of Finance only in the event the claimant has paid the school tax due for the tax year.

(2) The Secretary of Finance shall, after receiving the report required under paragraph (c)(1) of this section, pay over to each receiver of taxes and county treasurer an amount from the Elderly Property Tax Relief and Education Expense Fund established pursuant to § 6102(q) of Title 29, Delaware Code, to offset administrative costs to each county an amount up to 5% of the value of credits claimed, but not to exceed \$50,000. The Secretary of Finance may use an amount from the Elderly Property Tax Relief and Education Expense Fund established pursuant to § 6102(q) of

~~Title 29, Delaware Code to offset administrative costs up to 5% of the value of credits claimed, but not to exceed \$50,000.~~

~~(3) For tax years beginning on or after May 1, 1999 and before May 1, 2000, each receiver of taxes and county treasurer shall, no later than January 31, 2000, submit a list to the Secretary of Finance of taxpayers qualifying and approved for the credit under § 1917(c) of this Title, the amount equal of the school tax paid by said taxpayer, and the school tax that would have been due taking into account the credit under § 1917(c), along with such other information as deemed appropriate by the Secretary of Finance.~~

~~(4) For tax years beginning on or after May 1, 1999 and before May 1, 2000, the Secretary of Finance shall refund to taxpayers qualifying and approved for the credit under § 1917(c) of this title an amount equal to the school tax paid by said taxpayer less the school tax that would have been due taking into account the credit under subsection (c) of this section.~~

~~(5) The Secretary of Finance may promulgate such rules and regulations and prescribe such forms and reports as the Secretary of Finance shall deem necessary to implement this subsection.~~

~~(d) For tax years beginning on or after May 1, 2000, each receiver of taxes and county treasurer shall report to the Secretary of Finance the amount of credits allowed under § 1917(c) of this title for that tax year within 90 days of the date of any property tax billing. Such reports shall contain such further information and be in such form as the Secretary shall prescribe. The Secretary shall pay over to the State Treasurer, no later than 30 days following receipt of such report, an amount from the Elderly Property Tax Relief and Education Expense Fund established pursuant to § 6102(q) of Title 29 equal to the allowable credits which shall be deposited into a separate account in the depository for other school moneys to the credit of the district.~~

Section 3. Amend § 6102, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions shown by underline as follows:

§ 6102 Composition of General Fund; Delaware Higher Education Loan Program Fund.

~~(q)(1) A special fund of the State is created in the Department of Finance to be known as the "Elderly Property Tax Relief and Education Expense Fund," to which shall be deposited \$13,000,000 received in any revenue source not otherwise committed to a special fund and from which shall be paid claims made under this subsection and § 1919 of Title 14. Should such claims exceed \$13,000,000 during any fiscal year, the Secretary of Finance, with the approval of the Director of the Office of Management and Budget and Controller General, may transfer from the general contingency line in the Department of Education to the Elderly Property Tax Relief and Education Expense Fund the amount of such~~

reasonably foreseen additional claims. Any balance remaining in the Elderly Property Tax Relief and Education Expense Fund at the conclusion of any fiscal year shall revert to the General Fund.

~~(2) Sums appropriated pursuant to this section shall be allocated to school districts using a method that recognizes factors including, but not limited to, the number of primary residential households owned by persons 65 or over in each school district, the relative value of residential property owned by persons 65 and over, the relative property values of each school district, the school tax rates of each school district, and the average rate of application for tax relief pursuant to this section. The final method and allocation of these moneys shall be approved by the Secretary of Finance in consultation with the Controller General.~~

~~(3) Local school boards shall decide through majority vote of the whole school board whether to authorize a credit against taxation imposed pursuant to Chapter 19 of Title 14 on the valuation of any qualified property, as defined herein, owned by a person who, as of the beginning of the tax year, is of the age of 65 or more. The maximum such credit shall be the lesser of 50% of such tax remaining after taking into account any exemption pursuant to Title 9 and Title 22, or \$500. The receiver of taxes and county treasurer shall apply such credit after any change to the current expense tax rate pursuant to this section. Should the local school board decide to authorize less than the maximum amount of credit against taxation, the local school board shall develop a plan for using moneys received pursuant to this subsection, provide appropriate and reasonable public notice and comment on the proposed plan, and approve the plan through majority vote of the local school board. Local school boards shall submit the approved plan to the Secretary of Finance, the Secretary of Education, the Director of the Office of Management and Budget and the Controller General. In the event that local school boards choose not to authorize the aforementioned credit against taxation, the sums appropriated herein will result in increased state funding for education-related expenses of the school districts. Education-related expenses for the purposes of this subsection shall be defined as including, but not being limited to, computer hardware and software, library resources and other instructional materials, and minor capital improvements to school facilities. Local school boards and all other responsible parties under this paragraph are hereby directed to cause such conditions to be met as soon as practicable after the enactment of this section, but in no event later than October 30, 1999, and shall notify the Secretary of Finance and the Controller General as soon as such conditions are met. Notwithstanding any of the foregoing to the contrary, funds received pursuant to this section shall not be used for major capital improvements or debt service.~~

Section 4. Amend § 535, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions shown by underline as follows:

§ 535 Fraud and other penalties.

(n) Any person who files a return and claims the credit provided in § 1115 of this title without fulfilling all of the conditions under which such credit may be claimed, unless it is shown that such failure to fulfill all of the conditions was due to reasonable cause and not due to wilful neglect, shall pay a penalty of 20% of the credit claimed.

Section 5. Amend §1109(a)(1), Title 30 of the Delaware Code by making the insertions shown by underline as follows:

§ 1109 Itemized deductions

(a)(1) Reduced by:

c. The amount of school property taxes paid by the person for the taxable year with respect to which such person claims a credit pursuant to § 1115 of this title; and

Section 6. Amend § 1115, Title 30 of the Delaware Code by striking said section in its entirety and enacting a new § 1115 to read as follows:

§ 1115. Credit for school property taxes paid by seniors; rebate.

(a) A resident individual who is 65 years of age or over, who owns and occupies a dwelling located in the State of Delaware as the resident's principal residence, and whose income , as defined by subsection (b) of this section, together with the income of the resident's spouse, does not exceed \$50,000 individually or \$100,000 jointly, shall be allowed a refundable credit against the tax imposed by Chapter 11 of this title. The amount of such credit shall equal 40% of the local school tax, imposed pursuant to Title 14, that was paid by the resident individual or resident individuals who own and occupy a dwelling located in this State as a principal residence, but shall not, in any case, exceed \$400 in the aggregate. Property held by spouses as tenants by the entirety shall be deemed wholly owned by each spouse, but not more than 1 credit for such property shall be allowed in any year.

(b) For purposes of this section, the resident individual's income for any taxable year is the sum of:

(i) the individual's federal adjusted gross income as defined in the laws of the United States as the same are or shall become effective for that taxable year,

(ii) the additions set forth in section 1106(a) of Title 30 for that taxable year, and

(iii) the interest on obligations and securities of this State and its political subdivisions and authorities excluded from the resident individual's federal gross income in that taxable year under § 103 of the Internal Revenue Code [26 U.S.C. § 103].

For purposes of determining a resident individual's income under this subsection, an individual may make no reduction to the amount calculated under the preceding sentence for the subtractions set forth in section 1106(b) of this title or any deductions provided for in this subchapter II of chapter 11 of this title.

(c) A resident individual who established legal domicile in this State after December 31, 2017, will not qualify for the credit provided in this section unless such individual has been a domiciliary of the State of Delaware for not less than ten consecutive years, through and including the year for which the credit is claimed. A resident individual who established legal domicile in this State after December 31, 2012, but on or before December 31, 2017, will not qualify for the credit provided in this section unless such individual has been a domiciliary of the State of Delaware for not less than three consecutive years, through and including the year for which the credit is claimed.

(d) In the case of spouses who file a joint federal return but who elect to file separate or combined separate Delaware returns, the credit allowed pursuant to this section shall be divided equally between such spouses, even if only one spouse is 65 years of age or over, provided they meet the income threshold set forth in subsection (a) of this section. In no event shall the combined credit exceed the credit calculated under subsection (a) of this section.

(e) In the case of a resident individual who otherwise meets the eligibility requirements set forth in subsections (a) and (c) of this section, but who is not required to file a personal income tax return under the terms of § 1161 of this title, such individual may make application to the Division for a rebate of any amount otherwise due to that individual under subsection (a) or (f) of this section.

(f) In the case of persons who are not spouses, each of whom own (whether as joint tenants or tenants in common) and occupy a dwelling located in the State of Delaware as the resident individuals' principal residence, the credit allowed to each resident individual pursuant to this subsection shall be the credit calculated pursuant to subsection (a) of this section multiplied by a fraction, the numerator of which is one and the denominator of which is the total number of individuals owning and occupying the dwelling as a principal residence on the last day of the taxable year. Whether an individual described in the preceding sentence occupies a dwelling located in the State of Delaware as the individual's principal residence shall be determined as of the last day of the taxable year for which the credit is being claimed.

(g) The receiver of taxes and county treasurer for each county shall provide such information to the Division of Revenue in the content, manner, and frequency as the Director deems necessary to enable the Director to validate credits claimed pursuant to this section.

(h) The Director may prescribe such rules, regulations, forms and reports as the Director deems necessary to carry out the purpose of this statute.

Section 7. The Director of the Office of Management and Budget will authorize funds, of not less than \$200,000, from the Elderly Property Tax Relief and Education Expense Fund established pursuant to § 6102(q) of Title 29, Delaware Code to the Division of Revenue to offset administrative costs incurred in connection with establishing the processes necessary to administer the personal income tax credit created by this Act.

Section 8. If any provision of this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act and the application of this Act to any other person or circumstance shall not be affected.

Section 9. Effective dates. Sections 1 and 2 shall be effective January 1, 2020, Section 3 shall be effective January 1, 2021, Sections 4, 5, and 6 shall be effective for tax years beginning after December 31, 2019, provided that the Secretary of Finance has provided notice to the Register of Regulations, no later than December 15, 2019, that the systems are in place to enable the Division of Revenue to administer the credit provided for in Section 5. If the Secretary of Finance is unable to provide such notice to the Register of Regulations by December 15, 2019, then Sections 1 and 2 shall be effective January 1, 2021, Section 3 shall be effective January 1, 2022, and Sections 4, 5, and 6 shall be effective for tax years beginning after December 31, 2020. Section 7 shall be effective upon enactment.