

Chapter 88. Taxation

Article IX. Real Tax Relief for Certain Elderly and Permanently and Totally Disabled Persons

[Adopted 5-1-2000; amended in its entirety 3-6-2017]

§ 88-50. Definitions; word usage.

For the purpose of this article, the following terms, phrases and words have the meanings given herein. When inconsistent with the context, words in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

PERMANENTLY AND TOTALLY DISABLED

An individual who is permanently and totally disabled so as to be 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 which can be expected to last for the duration of such person's life. A person receiving benefits from the Social Security Administration pursuant to 42 U.S.C. § 423(d) shall be deemed disabled.

ELDERLY

A person who has reached the age of 65 years as of December 31 of the preceding year.

JOINT DWELLING

The sole dwelling jointly held by a husband and wife, with no other joint owners, may qualify if either spouse is 65 or over or is permanently and totally disabled, and the proration of the exemption under § 58.1-3211.1 shall not apply for such dwelling

INCOME

The computation of annual income shall be based on adding together the income received during the preceding calendar year, without regard to whether a tax return is actually filed, by (i) owners of the dwelling who use it as their principal residence, (ii) owners' relatives who live in the dwelling, except for those relatives living in the dwelling and providing bona fide caregiving services to the owner whether such relatives are compensated or not.

The total income shall not exceed \$25,000 per year, with the first \$5,000 of a relative's income living within the household being exempt as far as eligibility for the tax exemption.

EXEMPT PROPERTY

The sole dwelling (either house or manufactured home) and not to exceed one acre of land in which it is situated upon owned by and occupied as the sole dwelling of an owner who is at least 65 years of age or found to be permanently and totally disabled as of December 31 of the preceding year of the taxable year for which the exemption is claimed.

NET COMBINED FINANCIAL WORTH

The net financial worth, including equitable interest, as of the 31st day of December of the immediately preceding calendar year, of the owners and of the spouse of any owner that

occupies the dwelling as their principal residence, excluding the value of the dwelling and the land not exceeding one acre upon which it is situated, does not exceed \$50,000. The assets, including the present value of equitable interests, less the liabilities prepared in accordance with generally accepted account principles.

BONA FIDE CAREGIVER

If an owner qualifies for an exemption, and the owner can prove by clear and convincing evidence that his 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 person move in and provide care for the owner, and if a person does then move in for that purpose, then none of the income of that person or of that person's spouse shall be counted towards the income limit, provided that the owner of the residence has not transferred assets in excess of \$10,000 without adequate consideration within a three-year period prior to or after that person moves into such residence.

§ 88-51. Requirements for exemption.

Exemptions shall be granted to persons subject to the following provisions:

- A. The title of the property for which exemption is claimed is held or is partially held by the person or persons claiming exemptions on January 1 of the taxable year.
- B. Real property owned and occupied as the sole dwelling of an eligible person includes real property (i) held by the eligible person alone or in conjunction with his spouse as tenant or tenants for life or joint lives, (ii) held in a revocable inter vivos trust over which the eligible person or the eligible person and his spouse hold the power of revocation, or (iii) held in an irrevocable trust under which an eligible person alone or in conjunction with his spouse possesses a life estate or an estate for joint lives or enjoys a continuing right of use or support. The term "eligible person" does not include any interest held under a leasehold or term of years.
- C. The person occupying the dwelling and owning title or partial title thereto is 65 years of age or older or is permanently and totally disabled on December 31 of the year immediately preceding the taxable year. Such dwelling must be occupied as the sole dwelling of the person not less than 65 years of age or permanently and totally disabled. A dwelling jointly held by a husband and wife, with no other joint owners, may qualify if either spouse is 65 or is permanently and totally disabled.
- D. The gross combined income and the net combined financial worth, during the year immediately preceding the taxable year shall be in agreement with § 88-50, definitions of "income" and "net combined financial worth."
- E. Failure of a taxpayer to be current in the payment of all local taxes shall result in the forfeiture of the tax relief provided herein.
- F. The fact that persons who are otherwise qualified for tax exemption by an ordinance promulgated pursuant to this article are residing in hospitals, nursing homes, convalescent homes or other facilities for physical or mental health care for extended periods of time shall not be construed to mean that the real estate for which tax exemption is sought does not continue to be the sole dwelling of such persons during such extended periods of other residence so long as such real estate is not used by or leased to others for consideration.
- G. Prorated tax exemptions. The tax exemption for the dwelling that otherwise would have been provided shall be prorated by multiplying the amount of the exemption by a fraction that has as a numerator the percentage of ownership interest in the dwelling held by all such joint owners who are at least age 65 or permanently and totally disabled, and as a denominator, 100%. As a condition of eligibility for such tax exemption, the joint owners of the dwelling shall be required to furnish to the relevant local officer sufficient evidence of each joint owner's ownership interest in

the dwelling.

§ 88-52. Filing for exemption.

A person requesting the Commissioner of Revenue to consider an exemption shall file annually and beginning on March 1st and not later than May 1 of the taxable year an affidavit with the Commissioner of Revenue setting out the required information to comply with the requirements for the exemption of the net worth, income and age or handicapped status.

- A. The affidavit shall set forth, in a manner prescribed by the Commissioner of Revenue, (i) the names of the related persons occupying the real estate and (ii) that the total combined net worth including equitable interest and the combined income from all sources, of the persons specified in § 58.1-3212, does not exceed \$50,000.
- B. If after audit and investigation by the Commissioner of Revenue, the Commissioner of Revenue determines that the person or persons are qualified for exemption, the Commissioner of Revenue shall so certify his findings to the Treasurer of Buchanan County who shall deduct the amount of the exemption for the claimant's real estate tax liability.
- C. The Commissioner of Revenue has the discretion to grant extension of time until June 1st of each year for the filing of supporting documents required in this section (§ 88-52).
- D. If such person is under 65 years of age, such forms shall have attached thereto a certification by the Social Security Administrator, 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; 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. 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 standard for determining permanent and total disability as defined in § 58.1-3217.

§ 88-53. Administration.

According to the provisions of this article, the exemption shall be administered by the Commissioner of Revenue. The Commissioner of Revenue is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations in conformance with the provisions of this article, including the requirement of answers under oath. as may be reasonably necessary to determine qualifications as specified by the article. The Commissioner of Revenue may require the production of certified tax returns and appraisal reports to establish income or financial worth.

§ 88-54. Amount of exemption.

The person or persons qualifying for and claiming exemption shall be relieved of that portion of real estate tax levied on the qualifying dwelling and land in the amount calculated in accordance with the following schedule: Real estate tax exemptions shall not exceed \$125 for any one year. This exemption cannot be carried forward and can only be issued as a tax relief for the qualifying dwelling and the one acre of land upon which the house is situated. Should the tax liability on the property be less than \$125, the amount exempted would be the amount of the tax liability.

§ 88-55. Changes in status.

Changes in respect to income, financial worth, ownership of properties 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 in this article shall nullify any relief of any real estate tax liability for the then current taxable year and the taxable year immediately thereafter. No change in reclassification and reassessment shall be required for a tax year if the change in circumstances is attributable to the death during the tax year of the person whose age or disability qualified the real estate for the relief granted by this article.

§ 88-56. Violations and penalties.

Any person or persons who falsely claim exemptions under this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 for each offense.