



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**  
Margaret M. O'Neill Bldg., Suite 1, Room 311  
410 Federal Street  
Dover, Delaware 19901  
302-739-3621

The Honorable John Carney  
Governor

John McNeal  
SCPD Director

**MEMORANDUM**

DATE: May 23, 2017

TO: All Members of the Delaware State Senate  
and House of Representatives

FROM: Ms. Jamie Wolfe, Chairperson  
State Council for Persons with Disabilities

RE: S.B. 38 (Realty Tax Exemptions for Individuals with a Disability)

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. No. 38. This legislation was introduced on March 21, 2017. As of May 8, it had been released by the Senate Judicial and Community Affairs Committee and placed on the Ready List for action by the full Senate.

As background, New Castle, Kent, and Sussex Counties currently have ordinances which provide partial exemptions from real property taxes for homeowners with a disability. In New Castle and Kent Counties, "disability" is defined as equivalent to the standard in Social Security law. In Sussex County, "disability" is defined as being "physically prevented from pursuing any remunerative occupation". Income limits in all three counties generally disregard Social Security benefits. The domicile and residency requirements vary by county. The relevant ordinances for the three counties are attached for facilitated reference.

The New Castle County ordinances authorize a \$32,000 exemption from the assessed value of a principal residence for qualifying homeowners with income at or below \$50,000. An additional \$2,000 exemption applies to such homeowners based on loss of use of two limbs. If the disability is connected to military service, an additional \$5,000 exemption applies. See §§14.06.303 and 14.06.304.

The Kent County ordinances authorize a \$25,000 exemption from the assessed value of a residence owned by qualifying homeowners under certain income limits (\$16,000 for individual and \$22,000 for couple plus \$3,100 for each dependent residing in residence). If the disability is connected to military service, an additional \$5,000 exemption applies. See §191-9.

The Sussex County ordinances authorize a \$12,500 exemption from the assessed value of a residence owned by qualifying homeowners under certain income limits (\$4,500 for individual and \$6,500 for couple). We did not identify any additional exemption for service-connected disabilities.

Senate Bill No. 38 would essentially codify in State law the above county exemptions for individuals with disabilities (including the service-connected supplements). Counties could increase or expand the exemptions, but not eliminate or reduce them (lines 25-26). The synopsis observes that Delaware may be the only state “that is silent at the state level with regard to exemptions for service-related disabilities”.

SCPD has the following observations.

The disability-based exemptions are relatively modest. Indeed, the Sussex County standards are manifestly low (e.g. authorizing only a \$12,500 exemption of assessed value for an individual with countable income of \$4,500 or below). With inflation and predictable increases in real estate values, setting the existing standards as a minimum should not prove burdensome for counties. Counties could also diminish the impact of the exemptions by increasing assessed values either on a county-wide basis or as properties change hands.

Given the modest exemptions authorized by existing law, and their beneficial impact on persons with disabilities, the SCPD is endorsing the proposed legislation.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations on the proposed legislation.

cc: Mr. Brian Hartman, Esq.  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

SB 38 realty tax exemptions for individuals with a disability 5-23-17

Sec. 14.06.301. - Definitions.

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

Blindness means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye that is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty (20) degrees shall be considered for purposes of this definition as having a central visual acuity of 20/200 or less.

Disabled means a person who is unable to engage in any substantial gainful activity by reason of blindness or any other medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

Income means adjusted gross income, as defined under the Internal Revenue Code of 1986 or any successor thereto, as amended from time to time, but excluding social security and tier 1 railroad retirement benefits, plus the amount of capital gains excluded from such adjusted gross income. For any fiscal year for which an exemption is claimed, income shall be the income received during the calendar year immediately preceding the fiscal year for which exemption is sought.

Resident means one legally domiciled within the State as of July 1<sup>st</sup> of the fiscal year for which exemption is sought. Mere seasonal or temporary residence within the State, of whatever duration, shall not constitute domicile within the State. Absence from this State for a period of twelve (12) months shall be prima facie evidence of abandonment of domicile in this State. The burden of establishing domicile shall be upon the claimant.

(Ord. No. 98-050, § 1(14-256), 5-26-1998; Ord. No. 10-113, § 1(Exh. A), 1-18-2011)

Sec. 14.06.302. - Qualifications for and amount of elderly exemption.

A.

Elderly exemptions for those making application on or before tax year 2007:

1.

Qualifications. Every resident who is sixty-five (65) or more years of age and who has reached that age prior to July 1<sup>st</sup> of the fiscal year for which the exemption is sought and who or whose spouse resides in a house owned by him or her that is his or her principal residence shall be entitled to an exemption as set forth in Subsection B provided his or her income does not exceed fifty thousand dollars (\$50,000.00) per year or, in the case of a married couple the combined income of the two (2) of them does not exceed fifty thousand dollars (\$50,000.00) per year. No application under this Section shall be approved unless, at the time of the approval thereof, all taxes and sewer service charges then due to or collectible by New Castle County have been paid in full.

2.

Amount of elderly exemption. An elderly resident who meets the qualifications set forth in Subsection A shall be entitled to an exemption from all real property taxes, exclusive of any local light and ditch taxes, to an assessed value of fifty thousand dollars (\$50,000.00) on such principal residence.

3.

Continuation of exemption upon death. Notwithstanding Section 14.06.305, this exemption shall remain in effect for the entire fiscal year, so long as the applicant or spouse remains on the parcel for which the exemption is granted.

B.

Elderly exemptions for those making application on or after tax year 2008:

1.

Qualifications. Every resident who is sixty-five (65) or more years of age and who has reached that age prior to July 1<sup>st</sup> of the fiscal year for which the exemption is sought and who or whose spouse resides in a house owned by him or her that is his or her principal residence shall be entitled to an exemption as set forth in Subsection 2 provided his or her income does not exceed fifty thousand dollars (\$50,000.00) per year or, in the case of a married couple the combined income of the two (2) of them does not exceed fifty thousand dollars (\$50,000.00) per year; and further provided that the assessed value of the property does not exceed one hundred twenty-five thousand dollars (\$125,000.00.) For those whose assessed property value exceeds one hundred twenty-five thousand dollars (\$125,000.00), the State senior property tax exemption for those with incomes not in excess of three thousand dollars (\$3,000.00) shall apply. No application under this section shall be approved unless, at the time of the approval thereof, all taxes and sewer service charges then due to or collectible by New Castle County have been paid in full. A resident shall be defined as one legally domiciled within the state for a period of three (3) years immediately preceding October of the pretax year, as set forth in 9 Del. C. Ch. 81 (Limitations upon taxing power).

2.

Amount of elderly exemption.

a.

A resident who is sixty-five (65) or older who meets the qualifications set forth in subsection B, and whose property is not assessed at more than one hundred twenty-five thousand dollars (\$125,000.00), shall be entitled to an exemption from all real property taxes, exclusive of any local light and ditch taxes, to an assessed value of thirty-two thousand dollars (\$32,000.00) on such principal residence.

b.

An elderly resident whose property has an assessed value which exceeds one hundred twenty-five thousand dollars (\$125,000.00), but whose income does not exceed three thousand dollars (\$3,000.00) per year shall be entitled, on proper claim being made therefore, to exemption from taxation on such real property to an assessed valuation not exceeding five thousand dollars (\$5,000.00) as set forth in 9 Del. C. § 8131.

3.

If a resident who qualifies for a sixty-five (65) exemption on or before July 1, 2007 transfers his or her property and acquires a new property, the resident may transfer his or her exemption to the new residence upon the submission of a new application for exemption, accompanied by proper documentation of such transfer.

No application under this Section shall be approved unless, at the time of the approval thereof, all taxes and sewer service charges then due to or collectible by New Castle County have been paid in full, or the applicant is actively enrolled and making monthly payments of any tax or sewer charges due to or collectible by New Castle County as determined by the Office of Finance at the time of the application.

(Ord. No. 98-050, § 1(14-257), 5-26-1998; Ord. No. 98-088, § 1, 7-28-1998; Ord. No. 98-094, § 3, 9-22-1998; Ord. No. 99-043, § 1, 4-13-1999; Ord. No. 00-046, § 1, 4-25-2000; Ord. No. 04-155, § 1, 11-16-04; Ord. No. 07-131, § 1, 10-9-2007; Ord. No. 07-132, § 1, 10-9-2007; Ord. No. 10-113, § 1 (Exh. A), 1-18-2011; Ord. No. 11-052, § 1, 5-10-2011)

Sec. 14.06.303. - Qualifications for and amount of disability exemption.

A.

Disability exemptions for those making application on or before tax year 2007:

1.

Qualifications. Every resident who is disabled, as defined by Section 14.06.301, and who has become disabled prior to July 1<sup>st</sup> of the fiscal year for which the exemption is sought and who or whose spouse resides in a house owned by him or her that is his or her principal residence shall be entitled to an exemption from all real property taxes, exclusive of any local light and ditch taxes, to an assessed value not exceeding forty thousand dollars (\$40,000.00), providing his or her income does not exceed forty thousand dollars (\$40,000.00) per year or, in the case of a married couple, the combined income of the two (2) of them does not exceed forty thousand (\$40,000.00) per year. No application under this section or Section 14.06.304 shall be approved unless, at the time of the approval thereof, all taxes and sewer service charges then due to or collectible by New Castle County have been paid in full.

2.

Amount of disability exception. A person who is disabled as defined by Section 14.06.301 and who meets the requirements prescribed in Subsection A shall be entitled to an additional exemption from all real property taxes, exclusive of any local light and ditch taxes, to an assessed valuation not exceeding forty-two thousand dollars (\$42,000.00), provided his or her disability is due to the loss or loss of the use of both lower extremities or both upper extremities or both an upper and lower extremity such as to preclude locomotion without the aid of a brace, crutch, cane, or wheelchair and such as to require a home with special fixtures.

B.

Disability exemptions for those making application on or after tax year 2008:

1.

Qualifications. Every resident who is disabled, as defined by Section 14.06.301, and who has become disabled prior to July 1<sup>st</sup> of the fiscal year for which the exemption is sought and who or whose spouse resides in a house owned by him or her that is his or her principal residence shall be entitled to an exemption from all real property taxes, exclusive of any local light and ditch taxes, to an assessed value not exceeding thirty-two thousand dollars (\$32,000.00), provided his or her income does not exceed fifty thousand dollars (\$50,000) per year or, in the case of a married couple the combined income of the two (2) of them does not exceed fifty thousand dollars (\$50,000.00) per year. No application under this section or Section 14.06.304 shall be approved unless, at the time of the approval thereof, all taxes and sewer service charges then due to or collectible by New Castle County have been paid in full. A resident shall be defined as one legally domiciled within the State for a period of three (3) years immediately preceding October of the pretax year, as set forth in 9 Del. C. Ch. 81 (Limitations upon taxing power).

2.

Amount of disability exemption. A person who is disabled as defined by Section 14.06.301 and who meets the requirements prescribed in Subsection A shall be entitled to an additional exemption from all real property taxes, exclusive of any local light and ditch taxes, to an assessed valuation not exceeding forty-two thousand dollars (\$42,000.00), provided his or her disability is due to the loss or loss of the use of both lower extremities or both upper extremities or both an upper and lower extremity such as to preclude locomotion without the aid of a brace, crutch, cane, or wheelchair and such as to require a home with special fixtures.

3.

If a resident who qualifies for a disability exemption on or before July 1, 2007 transfers his or her property and acquires a new property, the resident may transfer his or her exemption to the new residence, upon the submission of a new application for exemption, accompanied by proper documentation of such transfer.

No application under this Section or Section 14.06.304 shall be approved unless, at the time of the approval thereof, all taxes and sewer service charges then due to or collectible by New Castle County have been paid in full, or the applicant is actively enrolled and making monthly payments of any tax or sewer charges due to or collectible by New Castle County as determined by the Office of Finance at the time of the application.

(Ord. No. 98-050, § 1(14-258), 5-26-1998; Ord. No. 01-104, § 1, 11-27-2001; Ord. No. 03-021, § 1, 3-25-2003; Ord. No. 07-131, § 2, 10-9-2007; Ord. No. 07-132, § 2, 10-9-2007; Ord. No. 09-028, § 1, 5-12-2009; Ord. No. 10-113, § 1(Exh. A), 1-18-2011; Ord. No. 11-052, § 2, 5-10-2011)

Sec. 14.06.304. - Disabled veteran's exemption.

A person meeting the requirements of Section 14.06.303 who became so disabled as a result of service in and while in the service of any branch of the United States armed services shall receive an additional exemption from all real property taxation, exclusive of any local light and ditch taxes, to an assessed valuation not exceeding five thousand dollars (\$5,000.00).

(Ord. No. 98-050, § 1(14-259), 5-26-1998)

Sec. 14.06.305. - Full taxation of property after termination of exemption.

A.

When, because of the change in health or death of the eligible resident, transfer of ownership, or any other change in status, a property no longer qualifies for an exemption granted under this Division, the exemption shall terminate at the end of the current tax quarter. The tax on the property shall be deemed to be levied upon the commencement of the next tax quarter and, if not paid, shall be subject to penalties as prescribed by State law. The tax shall be prorated in accordance with 9 Del. C. § 8340 (Levy of tax and creation of a lien based on the supplemental assessment roll).

B.

It shall be the obligation of the property owner receiving an exemption, his heirs, successors, or assigns, to provide timely notice to the County of any factor that renders the property no longer eligible for exemption under this Division. If the owner or his representative fails to provide such timely notice to the County, the County may back-bill the account in accordance with the provisions of Section 14.06.1110.

(Ord. No. 98-050, § 1(14-260), 5-26-1998; Ord. No. 10-113, § 1(Exh. A), 1-18-2011)

Sec. 14.06.306. - Waiver of penalty for social security pensioners.

A.

No penalty for failure to make timely payment of County taxes or sewer fees shall be assessed against any social security pensioner until after the fifth day of the month following a month in which the County tax or sewer fee is due to be paid. If the fifth day of that month falls on a weekend or other day on which the Office of Finance is properly closed for business, the penalty shall not be assessed until after the next business day.

B.

A social security pensioner, for purposes of this Section, shall be defined as anyone who is entitled to receive and does receive a social security pension and is obligated to pay County taxes or sewer fees. Proof of entitlement to the limited exemption from the penalty shall be made by the taxpayer with documentation from the Social Security Administration.

C.

The limited exemption of penalty granted by this Section shall be limited to County taxes and sewer fees for the residence of the social security pensioner.

(Ord. No. 98-050, § 1(14-261), 5-26-1998)

*Kent County, DE  
Monday, May 8, 2017*

## Chapter 191. Taxation

### Article I. Disabled Property Owner and Senior Citizen Exemption

#### § 191-1. Authority.

This article is adopted pursuant to the powers conferred upon the Levy Court of Kent County, Delaware, in Article VIII, Section 1 of the Constitution of the State of Delaware, as amended, and in 9 Del. C. § 8141, as amended.

#### § 191-2. Title.

This article shall be known as the "Program Providing Partial Tax Relief for Totally Disabled Property Owners and Property Owners 65 Years of Age and Older."

#### § 191-3. Qualifications for participation.

- A. To qualify under this article an applicant must be either:
- (1) Totally disabled and able to document said disability by meeting the definition of "totally disabled" as defined by social security disability or by filing certified copies of award letters from government agencies indicating that the applicant is totally disabled; or
  - (2) Sixty-five years of age or older at the beginning of the tax year for which application is made.
- B. However, an individual may only apply for inclusion in this program under one of the two provisions above.

#### § 191-4. Residency requirement.

[Amended 4-15-1997 by Ord. No. 97-04; 2-24-1998 by Ord. No. 98-02; 8-26-2003 by Ord. No. 03-20; 4-12-2005 by Ord. No. 05-04]

The applicant shall have maintained his/her principal place of residence in the State of Delaware for the five years immediately preceding the tax year for which application is being made. In addition, the dwelling for which the exemption is sought must be the principal place of residence of the applicant at the time of application and must have been the principal place of residence for the 12 months immediately preceding the tax year for which application is

being made. If an applicant is totally disabled and incurred his or her disability as a result of and while in the service of any branch of the United States armed services, the foregoing residency requirements are waived for said applicant, other than the requirement that the dwelling for which the exemption is sought must be the principal place of residence of the applicant at the time of the application.

### § 191-5. Ownership of property.

[Amended 10-9-2007 by Ord. No. 07-27]

Title to the property for which the exemption is sought must be in the name of applicant or in the name of the applicant and the applicant's spouse, or in the name of a revocable grantor trust, as reflected in the official records of the County. In the event that the ownership of the residence dwelling is shared by the applicant and spouse, or revocable grantor trust, with others who do not qualify for participation in this program, then the exemption permitted in § 191-9 shall apply only to the proportionate share of the residence dwelling owned by the applicant and spouse or revocable grantor trust.

### § 191-6. Eligible property.

Property considered eligible for inclusion under this article shall be only the residence dwelling owned by an eligible applicant and, if applicable, up to one acre of land upon which it is located. Land which has been included under the State of Delaware Farmland Assessment Act shall not be eligible for partial tax relief under this program.

### § 191-7. Income limits.

[Amended 4-15-1997 by Ord. No. 97-04; 4-9-2002 by Ord. No. 02-09; 10-10-2006 by Ord. No. 06-37<sup>[1]</sup>; 11-29-2011 by Ord. No. 11-21]

The total adjusted gross annual income of a single applicant shall not exceed \$16,000. The combined total adjusted gross annual income of an applicant and spouse residing together in the subject dwelling shall not exceed \$22,000. An additional \$3,100 per year may be added to the maximum adjusted gross annual income for each additional dependent residing in the dwelling of a qualified applicant for whom the applicant is the sole means of support. For the purposes of this article, the word "dependent" shall be defined by the Internal Revenue Services.

[1] *Editor's Note: This ordinance also provided an effective date of 6-1-2007.*

### § 191-8. Income exclusions.

Social security, Railroad Retirement Tier I and, if disabled, pension income directly related to the applicant's disability shall be excluded from the calculation of gross annual income.

### § 191-9. Exemption limit.

[Amended 4-15-1997 by Ord. No. 97-04; 4-12-2005 by Ord. No. 05-04]

An applicant who otherwise qualifies under this article shall be entitled to an exemption from all real property taxes on the first \$25,000 of assessed value of the applicant's eligible property

as defined in § 191-6. This exemption shall not apply to local ditch taxes or sewer, trash or other fees. If a totally disabled property owner incurred his or her disability as a result of and while in the service of any branch of the United States armed services, an additional \$5,000 of assessed value of the applicant's eligible property shall be exempt from all real property taxes.

### § 191-10. Filing for exemption.

[Amended 11-29-2011 by Ord. No. 11-21]

Applicants or their legal agents must file for exemption in the office of the Board of Assessment of Kent County in the manner determined no later than April 30 prior to the tax year for which the exemption is sought and must verify their eligibility, in writing, every year thereafter to continue to qualify for the exemption.

### § 191-11. Determination of eligibility.

- A. Based on the information submitted by the applicant and on County records, the Board of Assessment shall determine whether the application qualifies for the exemption permitted by this article.
- B. No application shall be approved unless all taxes, user fees, sewer service charges, I&E liens and all other taxes and fees then due to or collectible by Kent County have been paid in full by the application submission deadline date.

[Added 11-29-2011 by Ord. No. 11-21]

### § 191-12. Termination of eligibility.

Eligibility under this article shall terminate automatically when the applicant fails to meet any of the conditions stated herein.

### § 191-13. Appeals.

[Amended 11-29-2011 by Ord. No. 11-21]

An applicant may appeal the disposition of an exemption claim in the same manner as is provided for appeals from assessments. The deadline for filing written appeals shall be May 30 prior to the tax year for which the exemption is sought. In calendar year 1988, a later deadline date may be established by the Board of Assessment. Appeal hearings will be scheduled at the convenience of the Board.

### § 191-14. Administration.

The Board of Assessment, with concurrence of the Levy Court, shall establish written procedures providing for the administrative implementation of this article.

Sussex County, DE  
Monday, May 8, 2017

## Chapter 103. Taxation

### Article I. Real Property Tax Exemption for Disabled Persons

#### § 103-1. Exemption granted.

Every person who shall be a resident of this county, who shall be totally disabled and who has an income not in excess of \$4,500 per year or, if married, an aggregate income for husband and wife not in excess of \$6,500 per year and who shall reside in a dwelling owned by him which is a constituent part of his or her real property shall be entitled, upon proper claim being made therefor, to exemption from taxation on such real estate to an assessed valuation not exceeding \$12,500.

#### § 103-2. Contents of application.

Every application for such claim shall contain the following declarations:

- A. That the applicant has been a resident or owner of a residence in Sussex County for three years immediately past preceding the application.
- B. That the applicant is the owner of the real property and the dwelling for which such exemption is claimed.
- C. That the applicant resides in said dwelling.
- D. That the applicant is totally disabled and has attached the certificate of a medical doctor in support of such claim.
- E. That the applicants income is not in excess of \$4,500 or, in the event of a marriage, that the aggregate income for husband and wife is not in excess of \$6,500.

#### § 103-3. Application procedure.

Application for exemption pursuant to this article shall be made in the same manner as exemption applications for residents over 65 years of age shall be made.<sup>[1]</sup>

[1] *Editor's Note: See § 103-10 of this chapter.*

#### § 103-4. Applicability to surviving spouse.

The surviving spouse of such applicant shall remain exempt from taxation upon the death of the applicant so long as said surviving spouse shall:

- A. Remain a resident of this county,
- B. Remain the owner of the real property and of the dwelling for which such exemption was granted;
- C. Reside in said dwelling;
- D. Have an income not in excess of \$4,500 per year; and
- E. Remain unmarried.

### § 103-5. Term of exemption.

An exemption granted pursuant to this article shall remain in effect so long as the real property and the dwelling house thereon are owned by the applicant or his surviving spouse under the conditions set forth in §§ 103-1 and 103-3 hereof.

### § 103-6. Definitions.

For the purposes of this article, the following terms shall have the meanings indicated:

**INCOME**

Shall not include social security benefits or railroad retirement benefits.

**TOTALLY DISABLED**

A person who, as a result of accident, injury or disease, shall be permanently physically prevented from pursuing any remunerative occupation.

### § 103-7. Appeals.

Any applicant for this exemption who shall be aggrieved by the disposition of his claim may appeal such disposition in the manner provided by law.

## Article II. Real Property Tax Exemption for Senior Citizens

### § 103-8. Exemption granted.

Every person who shall be a resident of this county and has reached his/her 65th birth date and has an income not in excess of \$6,000 per year or, if married, an aggregate income for husband and wife not in excess of \$7,500 per year and shall reside in a dwelling owned by him or her which is a constituent part of his real property shall be entitled, upon proper claim being made therefor, to exemption from taxation on such real estate to an addressed valuation not exceeding \$12,500.

## § 103-9. Contents of application.

Every application for such claim shall contain the following declarations:

- A. That the applicant has been a resident of Sussex County for five years immediately past preceding the application;
- B. That the applicant is the owner of the real property and the dwelling for which such exemption is claimed;
- C. That the applicant resides in said dwelling;
- D. That the applicant is 65 years of age; and
- E. That the applicants income is not in excess of \$6,000 or, in the event of a marriage, that the aggregate income for husband and wife is not in excess of \$7,500.

## § 103-10. Application procedure.

Applications for exemption pursuant to this article shall be made in accordance with 9 Del. C. § 8133.

## § 103-11. Term of exemption.

An exemption granted pursuant to this article shall remain in effect so long as the real property and the dwelling house thereon are owned by the applicant under the conditions set forth in §§ 103-8 and 103-10 hereof

## § 103-12. Interpretation of income.

- A. For the purpose of this article, income for those presently receiving the exemption shall not include social security benefits or railroad retirement benefits.
- B. With the adoption of this article, income shall not include social security benefits. All pension benefits, with the exception of Tier I railroad retirement and survivor benefits, shall count as income.

## § 103-13. Appeals.

Any applicant for this exemption who shall be aggrieved by the disposition of his claim may appeal such disposition in the manner provided by law.