



Informational Guideline Release

Bureau of Municipal Finance Law
Informational Guideline Release (IGR) No. 08-208
September 2008

Supersedes IGR 06-201

PROPERTY TAX DEFERRAL FOR SENIORS

**Chapter 182, § 14 of the Acts of 2008
(G.L. c. 59, § 5(41A))**

This Informational Guideline Release (IGR) informs local officials about a change in the law allowing communities to increase the amount of gross receipts that seniors may have to qualify for a property tax deferral. It also explains the standards and procedures that apply to senior property tax deferrals generally.

Topical Index Key:

Accounting Policies and Procedures
Collection Procedures
Exemptions

Distribution:

Assessors
Collectors
Treasurers
Accountants/ Auditors

Supersedes IGR 06-201

PROPERTY TAX DEFERRAL FOR SENIORS

**Chapter 182, § 14 of the Acts of 2008
(G.L. c. 59, § 5(41A))**

SUMMARY:

These guidelines explain recent legislation that amends G.L. c. 59, § 5(41A), which allows seniors 65 or older who meet certain income and other requirements to defer all or part of their property taxes.

Under Clause 41A, the gross receipts of the applicant and applicant's spouse if married, for the previous calendar year cannot be more than \$20,000. A city or town may by vote of its legislative body increase that gross receipts limit up to a maximum amount set in the law. Previously, that maximum was \$40,000. Effective July 1, 2008, however, the maximum is now the income limit established by G.L. c. 62, § 6(k) for the "circuit breaker" state income tax credit for single seniors who are not heads of households. That limit is adjusted annually by the Commissioner of Revenue based on changes in the cost of living. See Section II-E-1. This change does not apply in communities operating under special acts that establish different procedures or income limits for senior property tax deferrals.

These guidelines update guidelines issued in 2006 on the operation of the deferral to reflect this recent legislative change. See Bureau of Municipal Finance Law Informational Guideline Release No. 06-201, *Property Tax Deferral for Seniors* (February 2006).

GUIDELINES:

I. APPLICATION PROCEDURE

A. Application Deadline

A taxpayer must file an application on an approved form with the board of assessors for each fiscal year for which a Clause 41A deferral is sought ([State Tax Form 97](#)). Each year's application is due on or before December 15, or three months after the actual tax bill for the fiscal year is mailed, whichever is later. Assessors may not waive the filing deadline, nor act on a late-filed application.

B. Appeals

An applicant aggrieved by the assessors' action on an application for a deferral may appeal to the state Appellate Tax Board, or the county commissioners if they live in a county where county government has not been abolished. The appeal must be filed within three months of the date the deferral was denied, or deemed denied if the assessors did not act.

II. DEFERRAL QUALIFICATIONS

A. Eligibility Date

Clause 41A deferral status is determined as of July 1. Any eligibility requirements for the deferral must be met as of that date.

B. Age

The applicant must be at least 65 years old on July 1.

C. Ownership

An applicant must be a natural person who owns the property on July 1 and has owned that property or another property in Massachusetts as a domicile for five years. The five years do not have to be consecutive. Ownership of any domicile in Massachusetts qualifies.

The applicant may be the sole owner or may own jointly with a spouse or other natural persons. The property may not be owned in whole or in part by a business, governmental or non-profit entity. If the applicant has co-owners, only the applicant must meet the current and durational domiciliary requirements.

As with personal exemptions, an applicant who holds a life estate in the property is considered its owner. If the property is held in trust, the applicant must be a trustee who also has a sufficient beneficial interest in the property.

D. Domicile

The applicant must occupy the property as his or her domicile on July 1 and must have been domiciled in Massachusetts for the preceding ten years. The ten years must be consecutive, but the taxpayer need not have lived all of those years in the same location in Massachusetts.

If the applicant has co-owners, only the applicant must meet the current and durational domiciliary requirements.

E. Gross Receipts

The applicant, and spouse if married, must have gross receipts of \$20,000 or less, for the prior calendar year.

1. Local Option Increase in Qualifying Gross Receipts

The maximum qualifying gross receipts may be increased by vote of the municipality's legislative body to any amount up to the income limit established by G.L. c. 62, § 6(k) for the "circuit breaker" state income tax credit for single seniors who are not heads of households. The new limit may apply to taxes deferred for any fiscal year that begins after the vote becomes effective and until a new vote is taken establishing a different limit.

a. "Circuit Breaker" Income Limits

The income limits for the circuit breaker state income tax credit are adjusted annually by the Commissioner of Revenue based on changes in the cost of living. The new limits for each state tax year are announced in the fall of that calendar year in a [Technical Information Release](#).

Clause 41A eligibility is based on the gross receipts for the prior calendar year. Therefore, the maximum amount that the community may increase the gross receipts limit for any fiscal year will be the amount established by the Commissioner of Revenue as the applicable income limit for the preceding state tax year.

Example

An applicant's eligibility for Clause 41A for fiscal year 2009, which begins on July 1, 2008, is based on calendar year 2007 gross receipts. The income limit established by the Commissioner for state tax year 2007 for single seniors who are not heads of households, which was \$48,000, would be the maximum gross receipts limit that could be adopted for Clause 41A deferrals beginning in fiscal year 2009.

b. Local Gross Receipts Vote

Municipalities may vote to increase their current qualifying gross receipts limit by a fixed dollar amount within the most recently established circuit breaker income limit for single seniors who are not heads of households, or a percentage of that limit which would result in the qualifying gross receipts limit increasing annually. The vote may make the increase applicable for a specific fiscal year or all fiscal years beginning after the vote becomes effective.

The following or similar language may be used for the vote:

VOTED: That the city/town increase the gross receipts that seniors may have in the prior calendar year to be eligible to defer property taxes under G.L. c. 59 § 5, Clause 41A from \$_____ to (\$_____/_____% of the amount established annually by the Commissioner of Revenue as the income limit for single seniors who are not heads of households to qualify for the “circuit breaker” state income tax credit for the preceding state tax year), with such increase to be effective for deferrals granted for taxes assessed for (the/any) fiscal year beginning on (or after) July 1, _____.

2. Gross Receipts Definition

Gross receipts means income from all sources and is broader than taxable income for federal or state income tax purposes. It includes wages, salaries, bonuses, commissions, public and private pensions, social security, alimony, child support, lottery winnings, interest and dividend income, capital gains, life insurance proceeds, net income from business or rental property after deduction of related business expenses and losses, public assistance, disability payments, unemployment compensation, workman’s compensation, regular cash or financial contributions or gifts from family or other persons outside the household, and any other income.

Ordinary business expenses or losses may be deducted, but not personal or family expenses, when computing gross receipts.

III. DEFERRAL PROCESS

A. Deferral Amount

Assessors may grant a Clause 41A deferral of all or part of the tax in any year with the following limitations:

1. The annual deferral of an applicant who owns the property jointly with someone other than a spouse is limited to the same percentage of the tax as the applicant's ownership interest.
2. The total deferral account, including interest, is limited to 50 percent of the applicant's proportionate share of the full and fair cash value of the property.

The applicant may receive a personal exemption and defer all or a portion of the balance of the tax to the extent of these limitations.

B. Deferral Agreement

In the first year a Clause 41A deferral is granted, the taxpayer must enter into a tax deferral and recovery agreement with the assessors. ([State Tax Form 97-1](#)). All co-owners and mortgagees must also sign the agreement for the deferral to take effect. This includes all remaindermen if the applicant holds a life estate and all co-trustees if the property is held in trust. The agreement will also cover taxes for any subsequent fiscal years if the taxpayer applies and qualifies for a deferral in those years.

A new agreement must be submitted in a later year only if there is a change in the persons with an interest in the property.

C. Deferral Statement

Assessors must record a statement ([State Tax Form 97-2](#)) that they entered into a Clause 41A recovery and deferral agreement with the taxpayer at the Registry of Deeds. The recorded statement constitutes a lien on the property to secure repayment of the deferred taxes and interest. The lien has priority over any prior or subsequent encumbrances on the property, except a recorded reverse mortgage that is not a shared appreciation instrument.

D. Deferral Notices

The assessors must issue a deferral certificate to the taxpayer ([State Tax Form 97-3](#)) and notify the collector and the accounting officer of the amount deferred for each year a Clause 41A deferral is granted. In the first year, the assessors should also notify the collector and treasurer of the amount of the fee paid to record their statement and provide them with copies of the statement and the deferral and recovery agreement with the taxpayer.

IV. COLLECTION PROCEDURES

A. Deferral Account

Taxes deferred under Clause 41A are treated as if secured by a tax title.

In the first year a Clause 41A deferral is granted, the treasurer must create a modified tax title account for the parcel in the amount of the deferred taxes. The amount of the fee paid to record the assessors' statement of entry into a deferral and recovery agreement is added to those taxes.

Deferral accounts should be maintained on regular tax title account forms (State Tax Form 410) and have a prominent notation added to the words "Tax Title Account" indicating that they secure taxes deferred under Clause 41A. The entries on the form 410 for "Date of Demand", "Date Advertised", and "Notices Posted" should be filled in "NA." The "Deed of Purchase or Instrument of Taking" should be filled in with the date of the assessors' statement, and the book and page (or registration certificate and document number in the case of registered land) of the statement should be entered in the places provided.

Clause 41A deferral accounts should be segregated from ordinary tax title accounts, since the liens are not ripe for foreclosure until the transfer of the property or death of the deferring taxpayer. Copies of the deferral and recovery agreement with the taxpayer and the assessors' recorded statement should be kept in the modified tax title file for the parcel.

If the property is already in tax title, the treasurer should add the deferred taxes to the tax title account, but make the modifications noted above for the years for which taxes are deferred.

B. Subsequent Year Taxes

1. Subsequent Deferred Taxes

If the assessors grant a deferral for any subsequent fiscal year, the collector must certify the deferred taxes to the account in the same manner as subsequent taxes are certified to an ordinary tax title account. No collector's interest is included in the amount certified, however.

2. Delinquent Taxes

If taxes assessed for any other year are not paid in full, the collector should issue a demand. If the taxes remain unpaid, the collector should then certify the taxes to the deferral account, with collector's interest and the demand fee. The collector may also enforce the personal liability.

C. Interest

1. Deferred Taxes

Interest on deferred taxes accrues at eight percent per annum, unless a lower rate has been locally adopted, as explained in Section IV-C-1-a below. If the property is transferred or the taxpayer dies before the account is paid, however, interest accrues at the 16 percent per year rate provided in G.L. c. 60, § 62 for ordinary tax title accounts from the date of sale or death until payment is made.

a. Local Option Decrease in Interest Rate

The interest rate that applies before the property sells or taxpayer dies may be decreased by vote of the municipality's legislative body from eight percent to any percentage, including "0." The new rate will apply to taxes deferred for any fiscal year that begins after the vote becomes effective.

The following or similar language may be used for the vote:

VOTED: That the city/town reduce the rate of interest that accrues on property taxes deferred by eligible seniors under G.L. c. 59, § 5, Clause 41A from _____% to _____%, with such reduced rate to apply to taxes assessed for any fiscal year beginning on or after July 1, _____.

Example

In May 2008, the municipality votes to reduce the deferral rate to 5% beginning with FY2009 taxes. In May 2010, the municipality votes to further reduce the deferral rate to 2.5%.

Taxpayer A has deferred taxes every year since FY2006. Before Taxpayer A sells the property or passes away, interest accrues on those taxes as follows:

<u>Fiscal Year</u>	<u>Interest Rate</u>
FY2006	8.0%
FY2007	8.0%
FY2008	8.0%
FY2009	5.0%
FY2010	5.0%
FY2011	2.5%

b. Interest Calculation

Interest is calculated from the dates interest accrues on unpaid taxes under the payment system the community used for that fiscal year. For example, interest would be calculated from:

- October 1 or the date of mailing of the actual tax bills, whichever is later, and April 1 for any years in which the community uses a semi-annual payment system under G.L. c. 59, § 57.
- The due dates of all preliminary and actual tax payments for any years in which the community uses a quarterly payment system under G.L. c. 59, § 57C.

If the taxpayer pays any of the taxes before the deferral is granted, a refund should be made with no interest, and interest on the deferred taxes should be calculated from the date of the refund to the taxpayer instead.

The collector's certification should include the relevant rate and dates to enable the treasurer to calculate the interest accruing on account of the deferred taxes.

2. **Delinquent Taxes**

Interest on delinquent taxes, interest and costs certified to the account for any year a deferral was not granted accrues at sixteen percent from the date certified to the deferral account.

D. **Prepayment**

The taxpayer may pay the deferral at any time in order to clear title on the property. If no partial payments have been made, interest on the deferred taxes is calculated from the dates interest accrues on unpaid taxes under the payment system the community used for that fiscal year until the payoff date. See Table A for examples.

The interest calculation on partial payments is the same as a payoff. Beginning with the oldest year, the payment is applied in this order: (1) accrued interest for each year, (2) costs and (3) taxes for each year. Interest on any future payoff is then calculated from the date of the partial payment.

E. **Surviving Spouse**

If the taxpayer dies, the surviving spouse may continue the deferral. To do so, the spouse must apply and qualify for the deferral in subsequent years and enter into a new deferral agreement. Any taxes deferred under the new agreement, together with interest, will be added to the amount already deferred so long as the 50 percent limit has not been reached. See Section III-A-2 above.

F. **Collection and Foreclosure**

The treasurer must calculate the amount due if the taxpayer or the taxpayer's estate wishes to pay the deferral and clear the title on the property, there is a conveyance of the property or the surviving spouse does not continue the deferral.

After the death of the taxpayer or the sale of the property, the tax title interest rate of 16 percent applies on the outstanding taxes. If the deferred taxes and accrued interest are not paid before then, the treasurer can institute foreclosure proceedings in Land Court six months after the death of the taxpayer or sale of the property.

G. Release of Lien

Once the deferred amount is paid in full, the treasurer must execute a renunciation of the municipality's lien on the property ([State Tax Form 97-4](#)) and record it at the Registry of Deeds.

V. ACCOUNTING

Deferred taxes are accounted for as "Deferred Property Tax Receivable".

TABLE A
PAYMENT CALCULATION

Assumes 6/30/2011 payoff date
8% interest rate for FY2006, 2007 & 2008, 5% for FY2009 & 2010, and 2.5% for FY2011

Semi-annual Billing System

FY	Tax Assessed	Tax Deferred	Due From	To Payoff Date	Time in Years	@Interest%	Tax	Interest
2006	\$2,000	\$1,000	10/1/05	6/30/11	5.75	46%	\$500	\$230.00
			4/1/06	6/30/11	5.25	42%	500	210.00
2007	2,200	1,100	10/1/06	6/30/11	4.75	38%	550	209.00
			4/1/07	6/30/11	4.25	34%	550	187.00
2008	2,400	1,200	10/1/07	6/30/11	3.75	30%	600	180.00
			4/1/08	6/30/11	3.25	26%	600	156.00
2009	2,600	1,300	10/1/08	6/30/11	2.75	13.75%	650	89.38
			4/1/09	6/30/11	2.25	11.25%	650	73.13
2010	2,800	1,400	10/1/09	6/30/11	1.75	8.75%	700	61.25
			4/1/10	6/30/11	1.25	6.25%	700	43.75
2011	3,000	1,500	10/1/10	6/30/11	.75	1.88%	750	14.10
			4/1/11	6/30/11	.25	.63%	750	4.73
TOTALS	\$15,000	\$7,500						\$1,458.34

Quarterly Billing System

FY	Tax Assessed	Tax Deferred	Due From	To Payoff Date	Time in Years	@Interest%	Tax	Interest
2006	\$2,000	\$1,000	8/1/05	6/30/11	5.92	47.36%	\$250	\$118.40
			11/1/05	6/30/11	5.67	45.36%	250	113.40
			2/1/06	6/30/11	5.42	43.36%	250	108.40
			5/1/06	6/30/11	5.17	41.36%	250	103.40
2007	2,200	1,100	8/1/06	6/30/11	4.92	39.36%	275	108.24
			11/1/06	6/30/11	4.67	37.36%	275	102.74
			2/1/07	6/30/11	4.42	35.36%	275	97.24
			5/1/07	6/30/11	4.17	33.36%	275	91.74
2008	2,400	1,200	8/1/07	6/30/11	3.92	31.36%	300	94.08
			11/1/07	6/30/11	3.67	29.36%	300	88.08
			2/1/08	6/30/11	3.42	27.36%	300	82.08
			5/1/08	6/30/11	3.17	25.36%	300	76.08
2009	2,600	1,300	8/1/08	6/30/11	2.92	14.60%	325	47.45
			11/1/08	6/30/11	2.67	13.35%	325	43.39
			2/1/09	6/30/11	2.42	12.10%	325	39.33
			5/1/09	6/30/11	2.17	10.85%	325	35.26
2010	2,800	1,400	8/1/09	6/30/11	1.92	9.6%	350	33.60
			11/1/09	6/30/11	1.67	8.35%	350	29.23
			2/1/10	6/30/11	1.42	7.10%	350	24.85
			5/1/10	6/30/11	1.17	5.85%	350	20.48
2011	3,000	1,500	8/1/10	6/30/11	.92	2.30%	375	8.63
			11/1/10	6/30/11	.67	1.68%	375	6.30
			2/1/11	6/30/11	.42	1.05%	375	3.94
			5/1/11	6/30/11	.17	.43%	375	1.61
TOTALS	\$15,000	\$7,500						\$1,477.95