



DISTRICT OF COLUMBIA LAND TITLE ASSOCIATION

**c/o David H. Cox, Esquire
Jackson & Campbell, P.C.
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Washington, D.C. 20036
Tel: 202-457-1634**

October 11, 2005

Mr. Martin Skolnik
Director of Real Property Tax Administration
Real Property Tax Assessment Service Office of Tax and Revenue
941 N. Capitol Street, NE
Fourth Floor
Washington, DC 20002

**Re: Lot 2020, Square 2540
Date of Transfer: March 25, 2005**

Dear Mr. Skolnik:

On behalf of the District of Columbia Land Title Association (DCLTA), I write to you about a pattern of retroactive assessments that is concerning the title industry. The problem seems to arise when a property is sold and the pattern of the problem is marked by inconsistency and absence of notice. Various benefits such as Homestead Deduction, Senior Citizen, and the "12% Cap" are being removed from properties *after* a sale, and the taxes are being recalculated for the period *preceding* the sale.

There are two types of statutory limitations on the OTR's ability to retroactively assess: the tax sale certificate statute (47 D.C. Code §§ 1301 et seq.) and the individual statutes dealing with each benefit.

Please find enclosed herewith a general analysis of the relevant statutes which sets forth when the various benefits commence and terminate.

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We ask if OTR takes any issues with our conclusions, and, if not, we ask that OTR recognize and publish to its employees a policy ensuring against retroactive assessments (unless specifically authorized under the Code).

We also enclose an analysis of a specific instance where we submit that OTR acted improperly and we ask that that property's tax record be corrected.

As you know, the title industry insures lenders and purchasers that taxes are paid through the paid tax year, and, in the case of retroactive assessments, the title underwriter can find itself liable. Without complete assurance that this exposure does not exist, the industry may have to react to the current situation in a manner adverse to the consumer.

Sincerely yours,

Respectfully yours,

DISTRICT OF COLUMBIA LAND TITLE
ASSOCIATION

By: 

David H. Cox
President

Enclosures

cc: Roy L. Kaufmann, Esquire
DCLTA Board of Directors

General Analysis of Commencement and Termination of Homeowner
Real Property Tax Benefits
in Connection with Transfers of Real Property

Roy L. Kaufmann

Summary:

Benefit	DC Code Section	Commences	Termination Upon Sale
Homestead Deduction	47-850 and 47-850.02	<p>If application is filed during first half, deduction effective for entire tax year.</p> <p>If filed during second half, effective for the entire second half even if the purchase occurs in the middle of that half year.</p>	<p>Provided that the Property was eligible for Homestead 30 days or less before the execution of the deed, the Deduction is effective through the date indicated to the left.</p>
Senior Citizen	47-863	Same as Homestead Deduction	<p>Provided that the Property was eligible for Senior Citizen Deduction 30 days or less before the execution of the deed, the Deduction is effective through the dated indicated to the left.</p>
12% Cap	47-864	Available at the same time the Homestead Deduction is available.	<p>Same as Homestead Deduction (however, ends if, during prior <i>tax</i> year, there was a transfer for consideration or change in zoning or assessment, etc.</p>
Changes in Assessed Value due to improvements, etc.	47-829	When OTR has determined that the current assessed value does not accurately account for the value of the property for a	

		number of specified reasons. Those conducted between January 1 and June 30 become effective October 1, and payable March 31. Those conducted between July 1 and December 31 become effective April 1 and payable September 15	
Changes in Class	47-813(d-1)	When OTR determines that the property is vacant or when the owner makes notice of the change.	

Detail:

I. Homestead Deduction:

A. Commencement:

D.C. Law 14-147 (“Homestead and Senior Citizen Real Property Tax Act of 2002”) which rewrote D.C. Code § 47-850 was intended to “reduce the filing burden of eligible owners...and to simplify classification, homestead, and senior citizen effective dates.” Preamble to D.C. Law 14-147.

The Mayor *shall* deduct \$38,000¹ from the estimated value of real property which qualifies as a Homestead. D.C. Code § 47-850(a)(1). For the property to receive the deduction “the individual shall complete and file an application...” showing that the property is a “Residence”² and a “Homestead”³.

¹ The Fiscal Year 2006 Budget Support Act of 2005, A16-0166, retroactively or otherwise effective October 1, 2005, amends the homestead provisions by increasing the deduction from \$38,000 to \$60,000. The eligibility or termination sections remain the same however.

² Principal place of residence within the District of an individual, stockholder or member, who is domiciled in the District. D.C. Code § 47-849(1).

The new D.C. Code § 47-850(c) instructs:

“If a properly completed and approved application is filed during the period October 1 through March 31 the tax year, the real property shall receive the deduction for the entire tax year.... If a properly completed and approved application is filed during the period April 1 through September 30, the real property shall receive 1/2 of the deduction [for the second installment only]”.
D.C. Code § 47-850(e) (emphasis added).

B. Pendency and Termination

The deduction applies to any succeeding tax year thereafter for which the deduction is allowed (i.e. no need to file any document to “renew” the deduction). D.C. Code § 47-850.02(a). When a property ceases to be a “Homestead” the Mayor is no longer required to apply the Homestead Deduction. D.C. Code § 47-850(a)(1).

As long as the property is eligible for the Homestead Deduction within 30 days before the execution of the deed, there is no need to notify the Mayor of any change in eligibility. D.C. Code § 47-850.02(b)(2). In such circumstances, the OTR may not rely upon D.C. Code § 47-850.02(5) which talks about retroactivity because that provision only applies if “notification is required”.⁴

Instead, OTR is governed by D.C. Code § 47-850(c) as to the Transferor. (See above for text of D.C. Code § 47-850(c).

When there is a sale, and the property has been used as a Homestead within 30 days prior to the deed, no notice is required. The District is, however, on notice of a transfer (with the filing of the FP7c) and may consider the property no longer a Homestead unless a new application is filed by the Transferee. But, such does not alter the fact that the Property was fully entitled to the Deduction through the date of the transfer.

This is entirely consistent with the legislative intent evident in D.C. Law 14-147 enacting the Homestead and Senior Citizen Real Property Tax Act of 2002, which was “to extend the eligibility for the homestead deduction...to all qualified owners.” Preamble to D.C. Law 14-147.

³ A class 1 residential unit owned in whole or in part by the individual. D.C. Code 47-849(2). But, if an individual claims more than one homestead in the same tax year, with no notice to OTR of change in eligibility, all deductions are lost. D.C. Code § 47-850.04.

⁴ Under D.C. Code § 47-850.02(b)(3), “If the tax is paid within 30 days of the corresponding bill, timely notification of the change in eligibility shall preclude assessment of penalty and interest.”

Note that, if a property is changed to Class 3 because the property is vacant, the benefits may be lost retroactively (see below).

II. Senior Citizen Reduced Liability Deduction

A. Commencement:

The new D.C. Code § 47-863(d) parallels the Homestead Deduction language: “If a properly completed and approved application is filed during the period October 1 through March 31 the tax year, the real property shall receive the deduction for the entire tax year.... If a properly completed and approved application is filed during the period April 1 through September 30, the real property shall receive 1/2 of the deduction [for the second installment only]”. D.C. Code § 47-863(d) (emphasis added).

B. Pendency and Termination

As with the Homestead Deduction statute, provided the property was eligible for the Senior Deduction 30 days or less before the execution of a deed, no notification is required. D.C. Code § 47-863(f)(2). In such circumstances, the OTR may not rely upon D.C. Code § 47-863(f)(5) which talks about retroactivity because that provision only applies if “notification is required”. Thus, D.C. Code § 47-863(d) entitles the Transferor enjoyment of the Senior Deduction through the half year during which the transfer occurred.⁵

Note that, if a property is changed to Class 3 because the property is vacant, the benefits may be lost retroactively (see below).

III. 12% Cap

A. Commencement

D.C. Code § 47-864(d)(1) requires an additional “owner-occupant residential tax credit” for “real property receiving the Homestead Deduction under § 47-850”.

B. Pendency and Termination

Availability is concurrent with the Homestead Deduction (however, this benefit ends if, during the prior *tax* year, there was a transfer for consideration, change in

⁵ Under D.C. Code § 47-863(f)(3), “If the tax is paid within 30 days of the corresponding bill, timely notification of the change in eligibility shall preclude assessment of penalty and interest.”

zoning or assessment, clearly erroneous assessment due to an error in calculation or measurement of improvements, or if, during the prior *calendar* year, there was a supplemental assessment under D.C. Code § 47-829).

Note that, if a property is changed to Class 3 because the property is vacant, the benefits may be lost retroactively (see below).

IV. Tax Deferral for Low-Income Senior Citizens

A. Commencement

This benefit has been promulgated in the recent “Fiscal Year 2006 Budget Support Act of 2005” and one’s eligibility for it is analogous to that for the Homestead Deduction.

B. Pendency and Termination

The language as it existed in the *Bill* indicated, in the same way as “senior citizen” deductions under D.C. Code § 47-873, that if a transfer occurs and the property is still eligible for deferral within 30 days of the transfer then no notice is required and because no notice is required the provision disallowing the benefit for the entire tax year does not apply (because that provision only applies to situations for which notification is required). See e.g. B16-128 at 5. By the time that language got into the *Act*, the phrase, “for which notification is required under this subsection” had been omitted. Thus it appears that low-income seniors will lose the benefit of tax *deferral* for the tax year in which the property was transferred, if the transfer occurred between October 1 through March 31 (If between April 1 through September 30, the deferral shall be disallowed for only ½ of the property taxes for the year). This happened when the *Bill* proposing the “Senior Citizen Real Property Tax Deferral Act of 2005” became the *Act* promulgating the “Tax Deferral for Low-income Property Owners Act of 2005” which resides in Subtitle S of the overarching “Fiscal Year 2006 Budget Support Act of 2005”.

V. Changes in Assessment

The general rule about assessments is that, “The assessed value for all real property shall be the estimated market value of such property *as of the valuation date.*” (emphasis added). D.C. Code § 47-820(a)(3).

A supplemental assessment may be levied once it has been discovered that, since the last annual or supplemental assessment, a piece of real property was (1) erroneously omitted from the previous assessment roll or tax list, (2) not listed on the previous assessment roll or tax list, (3) damage or destruction of an improvement, (4) a new improvement has been constructed, (5) certain types of

construction are in progress, or (6) a conversion has occurred and other requirements have been met. D.C. Code § 47-829. This assessment cannot be applied retroactively because D.C. Code § 47-829(f)(1) requires that the supplemental assessment be used to, “Revise the assessment roll and tax list to reflect the *current* estimated market value of real property...” (emphasis added).

VI. Change in Class

A change in Class can occur when a property is deemed vacant⁶. In the case of any change in class, D.C. Code § 47-813(d-1)(6) requires that, “If real property changes classification during the period October 1 through March 31 of the tax year, the real property shall be taxed at the rate of the new classification for the entire tax year. If real property changes classification during the period April 1 through September 30, the real property shall be taxed at the rate of the new classification for the second installment only.”

This is qualified by D.C. Code § 47-813(d-1)(3A)(B)(iii) that states that, “When a real property is reclassified as Class 3 Property under this section, any deduction under §§ 47-850, 47-850.01 and 47-863 or credit under § 47-864 shall be rescinded for the entire tax year, notwithstanding any other provision of law.”

⁶ Under D.C. Code § 47-813(d-1)(3A), “A rebuttable presumption that a real property is not occupied shall arise when a real property appears on the list compiled under § 42-3131.11.” This will change a classification from 1 or 2 to 3.