

Notice of Rulemaking Hearing

Tennessee State Board of Equalization

There will be a hearing before the Tennessee State Board of Equalization to consider the amendment of rules pursuant to Tenn. Code Ann. §§67-1-305. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. §4-5-204 and will take place in the 2nd floor conference room, at 321 Murfreesboro Road, Nashville, Tennessee at 10:30 a.m. on the 17th day of September, 2007.

Any individuals with disabilities who wish to participate in these proceedings should contact the Board to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact should be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Board to determine how it may reasonably provide such aid or service. Initial contact may be made with the Board's ADA Coordinator, Elaine Driver, at Ste. 1400, 505 Deaderick St., Nashville, TN 37243-0261 and telephone number 615/401-7738.

For a copy of this notice of rulemaking hearing, contact: Kelsie Jones, Ste. 1700, 505 Deaderick St., Nashville, TN 37243-0280, and telephone number 615/747-5379.

Substance of Proposed Amendment of the State Board of Equalization

Chapter 0600-09 Property Tax Freeze Program

Table of Contents

0600-09-.01 Purpose
0600-09-.02 Definitions
0600-09-.03 Adoption and Termination of Program by Local Government
0600-09-.04 Principal Residence Considerations
0600-09-.05 Age Requirement and Verification
0600-09-.06 Income Requirement
0600-09-.07 Income Verification
0600-09-.08 Verification of Ownership and Residency
0600-09-.09 Application Process and Deadlines
0600-09-.10 Base Tax Amount Determination
0600-09-.11 Removal from Program
0600-09-.12 Records and Reporting to State

0600-09-.01 Purpose.

The purpose of these rules is implementation of the provisions of Public Chapter 581, Acts of 2007 which enacted the Property Tax Freeze Act. The Act allows the legislative body of any county or municipality to adopt a property tax freeze program under the provisions of the Act. The Act provided for the State Board of Equalization, through the Division of Property Assessments, to establish rules and regulations to provide uniform definitions, application forms, income verification procedures and other necessary or desirable rules, regulations, policies and procedures for the implementation of the Property Tax Freeze Program.

Authority: Public Act 581, Acts of 2007, T.C.A. §§67-5-705.

0600-09-.02 Definitions.

For purposes of the tax freeze rules and regulations:

- (1) "Act" or "Tax Freeze Act" means the law codified as Tenn. Code Ann. § 67-5-705.
- (2) "Affidavit" is hereby defined as a notarized statement under oath which specifies all pertinent data and contains the valid signature of all parties thereto.
- (3) "Base Assessment" means the assessment as determined by the assessor of property used to determine the base tax.
- (4) "Base Tax" as defined by Tenn. Code Ann. § 67-5-705(c)(1)
- (5) "Collecting official" as defined by Tenn. Code Ann. § 67-5-705(c)(2).
- (6) "Division" or "Division of Property Assessments" shall mean the Division of Property Assessments in the Office of the Comptroller of the Treasury created by Tenn. Code Ann. § 67-1-201.
- (7) "Improvement" as defined by Tenn. Code Ann. § 67-5-705(c)(3).
- (8) "Owner" means a person that has a present possessory interest in the property fee or life estate, but for the purposes of the income requirement, "owner" includes persons of any interest in the property, including holders of remainder interest, who use the property as their principal residence at any time during the year
- (9) "Principal residence" as defined by Tenn. Code Ann. § 67-5-705(c)(4). Principal residence shall be determined and limited as provided for in Rule 0600-09-.04.
- (10) "Tax year" means the period of January 1 through December 31 of the year in which property taxes become due.
- (11) "Taxpayer" is hereby defined to be the applicant, except for determination of income.

Authority: Public Chapter 581, Acts of 2007, T.C.A. §67-5-705

0600-09-.03. Adoption and Termination of Program by Local Government

- (1) Adoption of Tax Freeze Program. The legislative body of any county or municipality adopting the property tax freeze program provided in Tenn. Code Ann. § 67-5-705 must do so by either resolution or ordinance. Upon adoption of such a resolution or ordinance, the clerk of the legislative body shall file a copy of the resolution or ordinance with the Division of Property Assessments within 45 days of adoption.

- (2) Termination of Tax Freeze Program. The legislative body of any county or municipality which has adopted the property tax freeze program provided in Tenn. Code Ann. § 67-5-705 may terminate the program by adopting a resolution or ordinance terminating the program. The clerk of the legislative body must file a copy of the resolution or ordinance terminating the program with the Division of Property Assessments within 45 days of adoption. The collecting official shall remove all taxpayers under the tax freeze program for the tax year subsequent to the year in which the resolution or ordinance terminating the program is adopted.

Authority: Public Chapter 581, Acts of 2007, T.C.A. §67-5-705

0600-09-.04 Principal Residence Considerations.

- (1) Maximum Land Size. The land subject to the tax freeze shall be limited to the portion of land used to support residential structures but no less than the minimum residential lot size required by applicable zoning. In no event may the land portion subject to the tax freeze exceed five (5) acres. For property not used exclusively for residential purposes, including farm, agriculture, forest or open space, only the portion of the land used to support the residential structures, such as that designated as the home site or improvement site on the assessment records, shall be eligible for the tax freeze; however, such land shall not exceed five (5) acres.
- (2) Principal Residence. Collecting officials shall determine a taxpayer's principal residence in accordance with the principles set forth by Tenn. Code Ann. § 2-2-122. The tax freeze is limited to one qualifying property constituting the principal residence of the taxpayer. The taxpayer shall sign a statement that the property for which the tax freeze is sought is the taxpayer's principal residence for voting purposes and that the taxpayer has not submitted another property as the taxpayer's principal residence for any purpose in the jurisdiction, the State of Tennessee or any other state.

Authority: Public Chapter 581, Acts of 2007, T.C.A. §67-5-705

0600-09-.05 Age Requirement and Verification.

- (1) A taxpayer, in order to satisfy the property tax freeze minimum age requirement, must attain age sixty-five (65) on or before December 31 of the tax year for which the property tax freeze is requested.
- (2) Acceptable evidences are:
 - (a) copy of birth certificate,
 - (b) copy of driver license,
 - (c) copy of medicare card,
 - (d) copy of marriage certificate which states the taxpayer's age,
 - (e) copy of passport,
 - (f) copy of military id,
 - (g) copy of valid census record, or
 - (h) other evidence submitted and approved by the collecting official that offers reasonable proof of age of the applicant.

Authority: Public Chapter 581, Acts of 2007, T.C.A. §67-5-705

0600-09-.06 Income Requirement.

- (1) A taxpayer, in order to satisfy the income requirement, must not receive a yearly income in excess of the statutory limit. The yearly income will be the total combined income of all property owners for the calendar year required for qualification or re-qualification.
- (2) The annual income declared by the taxpayer is subject to audit control which will include, but is not limited to, comparison of the income amount to social security benefits received for the prior year. The collecting official must place emphasis on the declaration of *ALL* income.
- (3) Annual income from all sources shall include, but is not limited to, social security payments after the medicare deduction, social security disability, supplemental security income, retirement and pension benefits after deduction of healthcare insurance premiums, veteran's benefits, worker's compensation, unemployment compensation, salaries and wages, alimony, total interest and total dividends. For income from a business, farm, rental property, estate settlement, sale of securities, or other comparable source, include only the net income or loss after expenses. Documentation of the loss must be provided with the application. Gain or loss from the sale of a principal residence, AFDC, child support, food stamps, and VA aid and attendance shall not be considered income. Except as otherwise provided by statute or these rules, determinations regarding the income of an applicant or owners of property shall be guided by the federal income tax requirements for determining income. When determining the income using a tax return, the adjusted gross income amount is used. This amount is added to any income sources specified above which may not be taxable by IRS standards.
- (4) Social Security, railroad retirement benefits, and Veterans Administration benefits that are required to be paid to a nursing home for the care of the taxpayer, or co-owner(s), shall not be considered as income. Documentation completed by the nursing home administrator or person handling the taxpayer's business must be provided.

Authority: Public Chapter 581, Acts of 2007, T.C.A. §67-5-705

0600-09-.07 Income Verification.

- (1) Evidence of income is required and must accompany the application. Acceptable evidence of income shall be the following for applications:
 - (a) A copy of the taxpayer's Federal Income Tax Return for the year in which the qualifying income must be determined, or
 - (b) An affidavit from the taxpayer that the taxpayer did not and was not required to file a Federal Income Tax Return.
- (2) Evidence of income may also include other evidence submitted and approved or required by the collecting official such as bank statements or interest earned statements.
- (3) The collecting official may require the taxpayer to sign any income verification authorization statement or form required by the division, Social Security Administration or the Internal Revenue Service.

Authority: Public Chapter 581, Acts of 2007, T.C.A. §67-5-705

0600-09-.08 Verification of Ownership and Residency.

- (1) Evidence of ownership and residency is required and must accompany the application. Acceptable evidence of ownership shall include, but not be limited to, a copy of the current year tax notice or receipt for each jurisdiction for which the tax freeze is requested. Acceptable evidence of residency shall include, but not be limited to, a copy of the taxpayer's voter registration card, if available. The collecting official may consider other evidence submitted by the taxpayer that offers reasonable proof of ownership and residency.
- (2) For a new application, before completing the certification, the collecting official must establish that the taxpayer is an owner as shown on the current year tax notice or receipt and the type of ownership interest; or if the taxpayer's name does not appear on the tax notice or receipt, the qualifications of the individual to apply for the tax freeze and the type of ownership must be evidenced. In the event the deed cannot be located, the taxpayer must submit an affidavit explaining the circumstances under which the applicant became the owner of the property.
- (3) The taxpayer must establish ownership by evidence submitted no later than the deadline for filing the application or reapplication established under Rule 0600-09-.09.
- (4) Other considerations of ownership verification are as follows:
 - (a) Life Estate. A holder of a life estate may be eligible for the tax freeze program. If the life estate is not shown on the tax notice/receipt, acceptable evidence must be provided. Acceptable evidence will be a recorded property deed, probated will or other legal instrument conveying the life estate.
 - (b) Mobile Home Owner. An eligible taxpayer owning and whose principal residence is a mobile home may qualify for the tax freeze program if the following is provided in addition to the taxpayer's application.
 1. A title or bill of sale (If a title or bill of sale is not available, an affidavit of purchase or inheritance may be provided.);
 2. In the event the taxpayer does not own the land, information from the assessor showing the assessment value of the mobile home; and
 3. A copy of the tax receipt.
 - (c) If an eligible property tax freeze taxpayer is relocated due to illness or disability, the property tax freeze may continue if the recipient intends to return to the home when recovered sufficiently. In determining whether the recipient intends to return to the home, rental of the home does not of itself evidence an intent not to return. If the rental is month-to-month or otherwise short-term consistent with the expected absence, the recipient may nevertheless be deemed to have an intent to return to the home.

Authority: Public Chapter 581, Acts of 2007, T.C.A. §67-5-705

0600-09-.09 Application Process and Deadlines.

- (1) The taxpayer must apply within thirty-five (35) days from the date taxes in the jurisdiction of the collecting official become delinquent for the tax year for which the freeze is sought to establish an initial base tax. A taxpayer who has established an initial base tax must reapply and re-qualify within thirty-five (35) days from the date taxes in the jurisdiction of the collecting

official become delinquent for the year preceding the tax year for which the freeze is sought. Provided, however, that if the county trustee acts as the agent for receiving and approving applications on behalf of the municipality, the delinquency date for the county taxes shall be used in determining the deadline for the municipal application or reapplication. A taxpayer who fails to reapply or re-qualify within the time established forfeits eligibility for the program

- (2) For a new application, before completing the certification, the collecting official must establish through application the following:
 - (a) That the taxpayer is an owner and ownership has been established pursuant to Rule 0600-09-.08.
 - (b) That the taxpayer is 65 years or older or will be 65 years or older by the end of the year for which the tax freeze is sought.
 - (c) That the property for which the tax freeze is sought is the principal residence of the taxpayer.
 - (d) That the taxpayer's income does not exceed the maximum income level for the jurisdiction as determined by the Comptroller of the Treasury.
 - (e) That the taxpayer was told to report the income of all owners.
 - (f) That the authority to sign for the owner was established if someone other than the property owner applied or signed the application and a copy of the documentation of authority was provided.
- (3) For a reapplication, before completing the certification, the collecting official must establish through ownership, income, and residency information that the taxpayer reported information consistent with that of prior years and there is no reason to believe the taxpayer misunderstood the instructions.
- (4) A municipality may authorize and appoint the county trustee to act as its agent for receiving applications and determining eligibility for its tax freeze program. Such agency shall be subject to the county trustee agreeing to act as such agent in writing. Such authorization shall be established through the resolution or ordinance provided for under Rule 0600-09-.03 or a subsequent resolution or ordinance. If such agency is authorized, the county trustee may rely on one application from the taxpayer in determining the qualifications and eligibility of the taxpayer for both county and municipality purposes.
- (5) The Division shall develop and furnish forms for the application and reapplication process. A substantially equivalent form may be used, provided that such form is approved by the Division. The Division may make such application and reapplication process available electronically.

Authority: Public Chapter 581, Acts of 2007, T.C.A. §67-5-705.

0600-09- .10 Base Tax Amount Determination

- (1) The collecting official shall furnish each applicant's name, property address and parcel identification to the assessor of property on or before the fifteenth (15) day after the deadline date for filing the application or reapplication. Within sixty (60) days after the deadline date the assessor shall certify the base assessment for each applicant. Nothing herein shall prevent the collecting official and assessor from exchanging information prior to these deadlines.

- (2) The tax rate for the year for which the base assessment is determined shall be applied to the base assessment to determine the base tax.
- (3) The base tax shall be adjusted when an improvement is made to the structures or land designated a part of the property in determining the base assessment. Such adjustment shall be determined by the assessor of property in accordance with procedures developed by the Division.
- (4) The base tax or adjusted base tax shall be used on the tax roll.
- (5) The base assessment and base tax shall be redetermined when the property is transferred to a new qualifying owner and shall be subject to the application of the new owner. The base assessment and base tax of the new owner shall be determined as of the tax year for which the new owner establishes eligibility.

Authority: Public Chapter 581, Acts of 2007, T.C.A. §67-5-705.

0600-09-.11 Removal from Program.

Taxpayers that fail to continue to qualify for the tax freeze shall be removed from the program. Upon removal from the program, taxes shall be determined using the current assessment and tax rate for the property.

Authority: Public Chapter 581, Acts of 2007, T.C.A. §67-5-705.

0600-09-.12 Records and Reporting to State.

- (1) All documents and records of the tax freeze program shall be maintained by the collecting official for a period of five (5) years from the deadline date for the application or reapplication.
- (2) Collecting officials may store the application and any documentation submitted for purposes of verification of income, age, residency, ownership, or other documentation necessary to qualify for the tax freeze in an electronic format and storage medium
- (3) Pursuant to Tenn. Code Ann. § 67-5-705(g)(2) the financial records obtained by the collecting official shall be considered confidential but shall be available to local or state officials who administer or enforce the provisions of the tax freeze program.
- (4) The collecting official shall furnish the following information to the Division on or before December 15 of each year:
 - (a) the total number of taxpayers on the tax freeze program by jurisdiction,
 - (b) the aggregate amount of actual taxes subject to the tax freeze,
 - (c) the aggregate amount of the frozen taxes; and
 - (d) other such information required by the Division.

Authority: Public Chapter 581, Acts of 2007, T.C.A. §67-5-705.

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of July, 2007. (FS 07-19-07; DBID 687)