Informational Guideline Release

Property Tax Bureau
Informational Guideline Release (IGR) No. 04-208
April 2004

TEMPORARY FINANCIAL HARDSHIP PROPERTY TAX DEFERRAL

G.L. Ch. 59 §5(18A)

This Informational Guideline Release (IGR) informs local officials about a new property tax deferral assessors may grant to individuals with financial hardships.

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G.L. Ch. 59 §5(18A)

SUMMARY:

These guidelines explain the provisions of a new property tax deferral, G.L. Ch. 59 §5(18A), that assessors may now grant to taxpayers experiencing temporary financial difficulties. The taxpayer may be of any age and the financial hardship may be due to any number of reasons, including a change to active military status. Assessors have the discretion to establish specific criteria for determining whether a taxpayer meets the statutory standard of financial hardship in the same manner they establish criteria for granting the Clause 18 hardship exemption to older taxpayers who are sick or disabled and of limited means. A Clause 18A deferral can be granted for a maximum period of three consecutive years. At the end of that period, the deferred taxes must be paid. The taxpayer may pay the deferred taxes, plus interest, in annual installments over a five-year period. The first payment is due two years after the last year of the deferral.

Except for the limited deferral period, the Clause 18A deferral operates similarly to the deferral available to qualifying seniors under G.L. Ch. 59 §5(41A). The taxpayer must enter into a deferral agreement with the assessors, the assessors record a lien statement to ensure the community can collect the amount deferred if the taxpayer does not pay it, the collector establishes a deferral account, which has the same status as a tax title, and the treasurer issues the release of lien upon payoff, as with a tax title redemption.

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 18A deferral is sought (State Tax Form 99). 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 hardship deferral may bring a civil action in the Superior Court or Supreme Judicial Court within 60 days of the assessors' decision. To prevail, the applicant must show that the decision was unlawful, or arbitrary or capricious.

II. DEFERRAL QUALIFICATIONS

A. Eligibility Date

Clause 18A deferral status is determined as of July 1. Any ownership, occupancy or financial hardship requirement for the deferral must be met as of that date.

B. Ownership

An applicant must be a natural person who owns the property on July 1. The applicant may be the sole owner or own jointly with a spouse or others. The property may not be owned in whole or in part by a corporation or other business entity, however.

As with personal exemptions and the Clause 41A senior deferral, 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.

C. 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.

D. Financial Hardship

The applicant must demonstrate a financial hardship, *i.e.*, the applicant currently lacks the financial resources to pay the taxes because of a change to active military status (not including initial enlistment), unemployment, illness or other reason as determined by the assessors.

Assessors may consider various factors in determining whether a taxpayer meets the statutory standard of financial hardship and may request any relevant financial records and documents to evaluate the application. Assessors should establish appropriate policies and criteria to ensure that they treat similarly situated taxpayers fairly and equitably, while maintaining some flexibility to address unique situations.

1. Financial Resources

Factors bearing on the financial resources of the applicant include, but are not limited to, the following:

- Income of the applicant, applicant's spouse, other adult household members and any co-owners not members of the household. Income means receipts from all sources regardless of income tax status under federal or state law, including wages, salaries and bonuses, public and private pensions, retirement income, Social Security, alimony, child support, interest and dividend income, net income from business, public assistance, disability and unemployment insurance, regular contributions/support/gifts from children or other parties outside the household.
- Savings, investments and other assets of applicant, applicant's spouse, other adult household members and any co-owners not members of the household.
- Military or employment status of applicant and applicant's spouse.
- Length of time applicant or applicant's spouse has been unemployed.
- Ability of applicant and applicant's spouse to work.
- Illness or disability of applicant, applicant's spouse, family member or other dependent.

2. Documentation

Supporting documentation may include, but is not limited to, the following:

- Federal and state income tax returns.
- Savings and checking account statements.
- Social security and pension fund statements.
- Records of public assistance.
- Schedules of assets.
- Outstanding bills.

A Clause 18A deferral may be granted even if the tax bill has already been paid. For example, where it is clear that funds for a tax payment have been borrowed from another, the applicant may still qualify for the deferral. Since an applicant's income and financial resources are critical factors in determining eligibility for this deferral, however, an applicant who has paid the tax must demonstrate a lack of financial capacity to make the payment in the first place or that making the payment makes it difficult to pay other critical bills, such as the mortgage.

E. Time Limit

The applicant must be seeking a Clause 18A deferral for taxes assessed for any of three consecutive fiscal years. A Clause 18A deferral cannot be granted for more than three tax years.

III. DEFERRAL PROCESS

A. Deferral Amount

Assessors may grant a Clause 18A 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 fifty percent of the applicant's proportionate share of the full and fair cash value of the property.

B. Deferral Agreement

In the first year a Clause 18A deferral is granted, the taxpayer must enter into a tax deferral and recovery agreement with the assessors. (State Tax Form 99-1). 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 the next two fiscal years if the taxpayer applies and qualifies for a deferral in either or both of those years. See Sections I and II above.

C. Deferral Statement

Assessors must record a statement (State Tax Form 99-2) that they entered into a Clause 18A 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 99-3) and notify the collector and the accounting officer of the amount deferred for each year a Clause 18A 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 18A are accounted for in the same manner as taxes deferred under Clause 41A, *i.e.*, they are treated as if secured by a tax title.

In the first year a Clause 18A 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 18A. 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 18A 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 either or both of the next two fiscal years, 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.

2. Delinquent Taxes

If taxes assessed for <u>any other year</u> 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

The following interest rates apply unless the taxpayer qualifies for relief under the federal Soldiers and Sailors Relief Act. 50 U.S.C. App. 560. Under that act, interest charged on taxes owed by taxpayers on active duty in any branch in the United States military is limited to six percent per annum.

1. Deferred Taxes

Interest on deferred taxes accrues at eight percent per annum. If the property is transferred or the taxpayer dies before the account is paid, however, interest accrues at the sixteen percent per annum rate provided for in G.L. Ch. 60 §62 for ordinary tax title accounts from the date of sale or death until payment is made.

The eight percent rate 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:

a. 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. Ch. 59 §57.

b. 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. Ch. 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 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. Payment

1. Due Dates

At the end of the Clause 18A deferral, the taxpayer becomes liable for payment of the deferred taxes. The taxpayer may pay the amount deferred in five annual installments. The first installment is due two years from the end of the last fiscal year for which a deferral is granted.

EXAMPLE 1

Taxpayer is first granted a deferral for FY05 and applies for and receives a deferral in FY06. No deferral is sought or granted in FY07. The last day of this deferral is June 30, 2006. The first payment of the deferred FY05 and FY06 taxes is due two years later on June 30, 2008. The other payments are due June 30, 2009, June 30, 2010, June 30, 2011 and June 30, 2012.

EXAMPLE 2

Taxpayer is first granted a deferral for FY05. No deferral is sought in FY06, but the taxpayer also seeks and receives a deferral for FY07. The last date of this deferral is June 30, 2007. The first payment of the deferred FY05 and FY07 taxes is due June 30, 2009. The other payments are due June 30, 2010, June 30, 2011, June 30, 2012 and June 30, 2013.

2. Installment Amount

Each installment equals one-fifth of principal, *i.e.*, the total taxes deferred, plus accrued interest on the unpaid balance. In the first year, interest is calculated from the dates interest accrues on unpaid taxes under the payment system the community used for that fiscal year until the June 30 installment due date. In subsequent years, interest on the unpaid balance runs from June 30 to June 30. See Table A for examples.

3. Billing Procedure

The treasurer should send a notice or statement to the taxpayer by June 1 of each year an installment is due. In the first year, the statement should show the total taxes deferred, accrued interest on the deferred taxes and the installment payment due by June 30 of that year. In subsequent years, it should show previous payments made, the unpaid balance and the principal and interest due for that year.

4. Prepayment

The taxpayer may pay the deferral at any time in order to clear title on the property. If no installment 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. If installment payments have been made, interest on the unpaid balance is calculated from June 30 of the year the last installment payment was made instead. See Table B for examples.

The taxpayer may also make partial payments on the deferral at any time. The interest calculation would be the same as a payoff and the payment would be applied to that amount first. Interest to be paid with the next installment would then be calculated from the date of the partial payment.

E. Surviving Spouse

If the taxpayer dies, the surviving spouse may continue the deferral for any of the years remaining in the three years covered by the deferral and recovery agreement. To do so, the spouse must apply and qualify for the deferral in those years and enter into a new deferral agreement covering them. 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 sixteen 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 99-4) and record it at the Registry of Deeds.

V. ACCOUNTING

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

TABLE A
INSTALLMENT PAYMENT CALCULATION

1ST INSTALLMENT

Semi-annual Billing System = $1568 [$660 taxes ($3,300 ÷ 5), plus $908 accrued interest from tax payment due dates to 6/30/05 (1st installment due date)]

FY	Tax Assessed	Tax Deferred	Due From	To	Time in Years	@ 8%	Tax	Interest
1	$2,000	$1,000	10/1/00	6/30/05	4.75	38%	$500	$190
			4/1/01	6/30/05	4.25	34%	500	170
2	2,200	1,100	10/1/01	6/30/05	3.75	30%	550	165
			4/1/02	6/30/05	3.25	26%	550	143
3	2,400	1,200	10/1/02	6/30/05	2.75	22%	600	132
			4/1/03	6/30/05	2.25	18%	600	108
TOTALS	6,600	$3,300						$908

Quarterly Billing System = $1,579.88 [$660 taxes ($3,300 ÷ 5), plus $919.88 accrued interest from tax payment due dates to 6/30/05 (1st installment due date)]

FY	Tax Assessed	Tax Deferred	Due From	To	Time in Years	@ 8%	Tax	Interest
1	$2,000	$1,000	8/1/00	6/30/05	4.92	39.36%	$250	$98.40
			11/1/00	6/30/05	4.67	37.36%	250	93.40
			2/1/01	6/30/05	4.42	35.36%	250	88.40
			5/1/01	6/30/05	4.17	33.36%	250	83.40
2	2,200	1,100	8/1/01	6/30/05	3.92	31.36%	275	86.24
			11/1/01	6/30/05	3.67	29.36%	275	80.74
			2/1/02	6/30/05	3.42	27.36%	275	75.24
			5/1/02	6/30/05	3.17	25.36%	275	69.74
3	2,400	1,200	8/1/02	6/30/05	2.92	23.36%	300	70.08
			11/1/02	6/30/05	2.67	21.36%	300	64.08
			2/1/03	6/30/05	2.42	19.36%	300	58.08
			5/1/03	6/30/05	2.17	17.36%	300	52.08
TOTALS	6,600	$3,300						$919.88

TABLE A
INSTALLMENT PAYMENT CALCULATION

2ND INSTALLMENT = $871.20 [$660 taxes, plus $211.20 accrued interest on $2,640 balance from 6/30/05 (1st installment due date) to 6/30/06 (2nd installment due date)]

3RD INSTALLMENT = $ 818.40 [($660 taxes, plus $158.40 accrued interest on $1,980 balance from 6/30/06 (2nd installment due date) to 6/30/07 (3rd installment due date))

4TH INSTALLMENT = $765.60 [($660 taxes, plus $105.60 accrued interest on $1,320 balance from 6/30/07 (3rd installment due date) to 6/30/08 (4th installment due date)]

5TH INSTALLMENT = $712.80 [($660 taxes, plus $52.80 accrued interest on $660 balance from 6/30/08 (4th installment due date) to 6/30/09 (5th installment due date)]

TABLE B
EARLY PAYOFF CALCULATION

BEFORE ANY PAYMENT Assume payoff on 4/1/04 before any payment of deferred taxes

Semi-annual Billing System - Amount due = **$3,878** [($3,300 deferred taxes, plus $578 accrued interest from tax payment due dates to 4/1/04 (payoff date)]

FY	Tax Assessed	Tax Deferred	Due From	To	Time in Years	@ 8%	Tax	Interest	Total Fiscal Year
1	$2,000	$1,000	10/1/00	04/01/04	3.5%	28%	$500	$140	$1,260
			4/1/01	04/01/04	3.0%	24%	500	120	
2	2,200	1,100	10/1/01	04/01/04	2.5%	20%	550	110	1,298
			4/1/02	04/01/04	2.0%	16%	550	88	
3	2,400	1,200	10/1/02	04/01/04	1.5%	12%	600	72	1,320
			4/1/03	04/01/04	1.0%	8%	600	48	
TOTALS	6,600	$3,300					$3,300	$578	$3,878

Quarterly Billing System - Amount due = **$3,889.88** [($3,300 deferred taxes, plus $589.88 accrued interest from tax payment due dates to 4/1/04 (payoff date)]

FY	Tax Assessed	Tax Deferred	Due From	To	Time in Years	@ 8%	Tax	Interest	Total Fiscal Year
1	$2,000	$1,000	8/1/00	4/1/04	3.67	29.36	$250	$73.40	$1,263.60
			11/1/00	4/1/04	3.42	27.36	250	68.40	
			2/1/01	4/1/04	3.17	25.36	250	63.40	
			5/1/01	4/1/04	2.92	23.36	250	58.40	
2	2,200	1,100	8/1/01	4/1/04	2.67	21.36	275	58.74	1,301.96
			11/1/01	4/1/04	2.42	19.36	275	53.24	
			2/1/02	4/1/04	2.17	17.36	275	47.74	
			5/1/02	4/1/04	1.92	15.36	275	42.24	
3	2,400	1,200	8/1/02	4/1/04	1.67	13.36	300	40.08	1,324.32
			11/1/02	4/1/04	1.42	11.36	300	34.08	
			2/1/03	4/1/04	1.17	9.36	300	28.08	
			5/1/03	4/1/04	.92	7.36	300	22.08	
TOTALS	6,600	$3,300					$3,300	$589.88	$3,889.88

AFTER INSTALLMENT PAYMENT MADE – Assume payoff on 4/1/07 after 1st and 2nd installments paid

Amount due = **$2,099.34** [$1,980 unpaid balance of deferred taxes, plus $119.34 accrued interest from 6/30/06 (2nd installment due date) to 4/1/07 (payoff date)]