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Directive 10-7: Application of "Circuit Breaker Credit" to a Life Estate

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Introduction:

This Directive explains the applicability of a refundable credit against personal income taxes (also known as the "circuit breaker credit") when a taxpayer occupies his or her principal residence under the terms of a life estate.

Issue:

Is an otherwise qualifying taxpayer that owns a life estate in his or her personal residence eligible for the circuit breaker credit?

Directive:

A taxpayer that occupies his or her principal residence under the terms of a life estate which requires the life tenant to pay real estate taxes and is otherwise eligible may claim the "Circuit Breaker Credit" and must use the method described for homeowners in TIR 01-3.

Discussion:

A renter or owner of a principal residence located in Massachusetts who is age 65 or older at the close of the taxable year may be eligible to claim a refundable credit against personal income taxes. Generally known as the "circuit breaker credit," this credit is based upon the actual real estate taxes or rent paid by a taxpayer eligible to claim the credit. See G.L. c. 62, § 6(k) and TIR 01-19 and annual eligibility updates.

To claim the credit, the taxpayer or spouse, if married filing jointly, must be [65 years of age or older at the close of the tax year](#); the taxpayer must own or rent residential property in Massachusetts and occupy the property as his or her principal residence; the taxpayer's "total income" cannot exceed certain threshold amounts which are set annually depending on filing status; and for homeowners, the assessed valuation of the homeowner's personal residence as of January 1, before residential exemptions but after abatements, cannot exceed an annually set maximum amount.

Some taxpayers occupy their principal residence under the terms of a life estate. In the most common life estate situation, a remainder interest is transferred to a third party, often a child, with the grantor(s) retaining a life interest, either individually or jointly. The life tenant generally retains the exclusive right to use the property during his or her lifetime, but that right expires automatically upon the death of the last of the life tenant(s). A life tenant can also receive his or her interest from another grantor.

Although the creation of a life estate leaves the grantor with less than a fee simple ownership, generally, the life tenant remains responsible for real estate taxes, insurance, and ordinary maintenance costs and the upkeep of the property. Generally, the life tenant is entitled to all income from the property for the duration of the life estate. Therefore, solely for purposes of claiming the circuit breaker credit, a life tenant, if otherwise eligible, must claim the credit under the homeowner rules. This is also the case where the taxpayer transfers property to a revocable grantor trust. However, if the property is put into an irrevocable trust for the benefit of others, for example, children, the taxpayer must claim the credit using the renter rules. In this case if under the terms of the deed,

the taxpayer is required to make payments in lieu of rent the taxpayer may treat these payments the same as if they were rent and should follow the renter rules when filing for the credit. See TIR 01-19, Section V. D.

Generally, an occupant of real estate owned by business entities, including corporations, S corporations, and LLCs, is ineligible for the circuit breaker credit except to the extent that the occupant qualifies as a renter.

/s/ Navjeet K. Bal

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Commissioner of Revenue

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