

# TAX EXEMPTION – SENIORS

## AN ORDINANCE OF THE TOWN OF KIRKWOOD PROVIDING A PARTIAL EXEMPTION FROM TAXATION BY THE TOWN TO PERSONS SIXTY-FIVE YEARS OF AGE OR OLDER

Adopted November 14, 1972

### SECTION 1. Title

This ordinance shall be known and cited as “An Ordinance Providing a Partial Exemption from Town Taxation to Persons Sixty-Five Years of Age or Older Pursuant to the Provisions of Section 467 of the Real Property Tax Law of the State of New York.” Adopted November 14, 1972.

### SECTION 2. Exemption Provided

a. Real property situate within the bounds of the Town of Kirkwood, Broome County, New York, owned by one or more persons, each of whom is 65 years of age or over, or real property owned by husband and wife or siblings, i.e. a brother or sister whether related through half blood, whole blood or adoption, one of whom is 65 years of age or over, shall be exempt from taxation for real estate taxes to be levied by the Town of Kirkwood for the year 2005 and thereafter by the percentage of exemption specified for the annual income ranges listed below. Such exemption shall be based upon the assessed valuation of the exempt real property and shall be computed after all other partial exemptions allowed by law excluding the school tax relief (STAR) exemption authorized by Section four hundred twenty-five of the Real Property Tax Law, have been subtracted from the total amount assessed.

Annual Income Ranges	Exemption Percentage
1) \$24,500 or less	50%
2) More than \$24,500 but less than \$25,500	45%
3) \$25,500 or more but less than \$26,500	40%
4) \$26,500 or more but less than \$27,500	35%
5) \$27,500 or more but less than \$28,400	30%
6) \$28,400 or more but less than \$29,300	25%
7) \$29,300 or more but less than \$30,200	20%

(Latest Amendment: 1-3-06 by LL No. 1-2006)

b. Income tax year shall mean the twelve month period for which the owner or owners filed a federal personal income tax return, or if no such return is filed, the calendar year. Where title is vested in either the husband or the wife, their combined income may not exceed such sum, except where the husband or wife, or ex-husband or ex-wife is absent from the property as provided in subparagraph (3) of paragraph (c) of the subdivision, then only the income of the spouse or ex-spouse residing on the property shall be considered and may not exceed such sum. Such income shall include social security and retirement benefits, interest, dividends, total gain from the sale or exchange of a capital asset which may be offset by a loss from the sale or exchange of a capital asset in the same income tax year, net rental income, salary or earnings, and net income from self-employment, but shall not include a return of capital, gifts or inheritances or monies earned through employment in the federal foster grandparent program. In computing net rental income and net income from self-employment no depreciation deduction shall be allowed for the exhaustion, wear and tear of real or personal property held for the production of income. Nor shall such income include veterans disability compensation, as defined in Title 38 of the United States Code, payments made to individuals because of their status as victims of Nazi persecution, as defined in P.L. 103-286, or proceeds of a reverse mortgage, as authorized by section six of the banking law, and sections two hundred eight and two hundred eighty-a of the real property law; provided however, that monies used to repay a reverse mortgage may not be deducted from income, and provided additionally that any interest or dividends realized from the investment of reverse mortgage proceeds shall be considered income. (Amended 9-7-2010 by LL NO. 13-2010)

c. No exemption shall be granted:

(1) unless the title of the property shall have been vested in the owner or one of the owners of the property for at least twelve consecutive months prior to the date of making application for exemption, provided, however, that in the event of the death of either a husband or wife in whose name title of the property shall have been vested at the time of death and then becomes vested solely in the survivor by virtue of devise by or descent from the deceased husband or wife, the time of ownership of

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the property by the deceased husband or wife shall be deemed also a time of ownership by the survivor and such ownership shall be deemed continuous for the purposes of computing such period of twenty-four consecutive months. In the event of a transfer by either a husband or wife to the other spouse of all or part of the title to the property, the time of ownership of the property by the transferor spouse shall be deemed also a time of ownership by the transferee spouse and such ownership shall be deemed continuous for the purposes of computing such period of twelve consecutive months. In the event of a transfer by either a husband or wife to the other spouse of all or part of the title to the property, the time of ownership of the property by the transferor spouse shall be deemed also a time of ownership by the transferee spouse and such ownership shall be deemed continuous for the purposes of computing such period of twelve consecutive months. Where property of the owner or owners has been acquired to replace property formerly owned by such owner or owners and taken by eminent domain or other involuntary proceeding, except a tax sale, the period of ownership of the former property shall be combined with the period of ownership of the property for which application is made for exemption and such periods of ownership shall be deemed to be consecutive for purposes of this section. Where a residence is sold and replaced with another within one year and both residences are within the state, the period of ownership of both properties shall be deemed consecutive for purposes of the exemption from taxation. Where the owner or owners transfer title to property which as of the date of transfer was exempt from taxation under the provisions of this section, the reacquisition of title by such owner or owners within nine months of the date of transfer shall be deemed to satisfy the requirements of this paragraph that the title of the property shall have been vested in the owner or one of the owners for such period of twelve consecutive months. Where, upon or subsequent to the death of an owner or owners, title to property which as of the date of such death was exempt from taxation under such provisions, becomes vested, by virtue of devise or descent from the deceased owner or owners, or by transfer by any other means within nine months after such death, solely in person or persons who, at the time of such death, maintained such property as a primary residence, the requirement of this paragraph that the title of the property shall have been vested in the owner or one of the owners for such period of twelve consecutive months shall be deemed satisfied;

(2) unless the property is used exclusively for residential purposes, provided, however, that in the event any portion of such property is not so used exclusively for residential purposes but is used for other purposes, such portion shall be subject to taxation and the remaining portion only shall be entitled to the exemption provided by this section;

(3) unless the real property is the legal residence of and is occupied in whole or in part by the owner or by all of the owners of the property: except where, (i) an owner who is absent from the residence while receiving health-related care as an inpatient of a residential health care facility, as defined in section twenty-eight hundred one of the public health law, and provided that any income accruing to that person shall only be income only to the extent that it exceeds the amount paid by such owner, spouse, or co-owner for care in the facility; and provided further, that during such confinement such property is not occupied by other than the spouse or co-owner of such owner; or (ii) the real property is owned by a husband and/or wife, or an ex-husband and/or an ex-wife, and either is absent from the residence due to divorce, legal separation or abandonment and all other provisions of this section are met provided that where an exemption was previously granted when both resided on the property, then the person remaining on the real property shall be sixty-two years of age or over.

d. The real property tax exemption on real property owned by husband and wife, one of whom is sixty-five years of age or over, once granted, shall not be rescinded solely because of the death of the older spouse so long as the surviving spouse is at least sixty-two years of age.

e. Notwithstanding any other provision of law to the contrary the provisions of this section shall apply to any real property held in trust solely for the benefit of a person or persons who would otherwise be eligible for a real property tax exemption, pursuant to subdivision one, two or three of paragraph c, were such person or persons the owner or owners of such real property.

SECTION 3.           Application for Exemption  
(Amended Dec. 26, 1989 by LL No. 12-1989)  
(Amended Dec. 26, 1990 by LL No. 10-1990)  
(Amended Nov. 3, 1993 by LL No. 4-1993)  
(Amended Feb. 6, 1996 by LL No. 3-1996)

a. Application for such exemption must be made by the owner or all of the owners of the property on forms to be furnished by the Town Assessor's Office; such applications shall furnish the information and the forms

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are to be executed in the manner required or prescribed in such forms and shall be filed in such Assessor's Office by taxable status date. However, such form may be filed with the assessor after the appropriate taxable status date but not later than the last date on which a petition with respect to complaints of assessment may be filed, where failure to file a timely application resulted from; (a) a death of the applicant's spouse, child, parent, brother or sister; or (b) an illness of the applicant or of the applicant's spouse, child, parent, brother or sister, which actually prevents the applicant from filing on a timely basis, as certified by a licensed physician. The assessor shall approve or deny such application as if it had been filed on or before the taxable status date. Any person otherwise qualifying under the section shall not be denied the exemption under this section if he becomes sixty-five years of age after the appropriate taxable status date on or before December thirty-first of the same year.

b. At least sixty days prior to the appropriate taxable status date, the assessors shall mail to each person who was granted exemption pursuant to this section on the latest completed assessment roll an application form and a notice that such application must be filed on or before taxable status date and be approved in order for the exemption to be granted. The assessors shall, within three days of the completion and filing of the tentative assessment roll, notify by mail any applicant who has included with this application at least one self-addressed, pre-paid envelope, of the approval or denial of the application; provided, however, that the assessors shall, upon the receipt and filing of the application, send by mail notification of receipt to any applicant who has included two such envelopes with the application. Where an applicant is entitled to a notice of denial pursuant to this subdivision, such notice shall be on a form prescribed by the state board and shall state the reasons for such denial and shall further state that the applicant may have such determination reviewed in the manner provided by law. Failure to mail any such application form or notices or the failure of such person to receive any of the same shall not prevent the levy, collection and enforcement of the payment of the taxes on property owned by such person.

c. Any person who has been granted exemption pursuant hereto on five (5) consecutive completed assessment rolls, including any years when the exemption was granted to a property owned by a husband and/or wife while both resided in such property, shall not be subject to the requirements set forth in paragraph (b) of this Section, however said person shall be mailed an application form and a notice informing him of his rights. Such exemption shall be automatically granted on each subsequent assessment roll. Provided, however, that when tax payment is made by such person a sworn affidavit must be included with such payment which shall state that such person continues to be eligible for such exemption. Such affidavit shall be on a form prescribed by the State Board of Equalization and Assessment. If such affidavit is not included with the tax payment, the collecting officer shall proceed pursuant to section five hundred fifty-one-a of this chapter.

d. (1) Notwithstanding the provisions of subparagraph a of this section, where a person who meets the requirements for an exemption pursuant to this ordinance, purchases property after the levy of taxes, such person may file an application for exemption to the assessor within thirty days of the transfer of title to such person. The assessor shall make a determination of whether the parcel would have qualified for exempt status on the tax roll on which the taxes were levied, had title to the parcel been in the name of the applicant on the taxable status date applicable to the tax roll. The application shall be on a form prescribed by the state board. The assessor, no later than thirty days after receipt of such application, shall notify both the applicant and the board of assessment review, by first class mail, of the exempt amount, if any, and the right of the owner to a review of the exempt amount upon the filing of a written complaint. Such complaint shall be on a form prescribed by the state board and shall be filed with the board of assessment review within twenty days of the mailing of this notice. If no complaint is received, the board of assessment review shall so notify the assessor and the exempt amount determined by the assessor shall be final. If the applicant files a complaint, the board of assessment review shall schedule a time and place for a hearing with respect thereto no later than thirty days after the mailing of the notice by the assessor. The board of assessment review shall meet and determine the exempt amount, and shall immediately notify the assessor and the applicant, by first class mail, of its determination. The amount of exemption determined pursuant to this paragraph shall be subject to review as provided in article seven of the Real Property Tax

Law of the State of New York. Such a proceeding shall be commenced within thirty days of the mailing of the notice of the board of assessment review to the new owner as provided in this paragraph.

(2) Upon receipt of a determination of exempt amount as provided in subparagraph (1) of this paragraph, the assessor shall determine the pro rata exemption to be credited toward such property by multiplying the tax rate or tax rates for each municipal corporation which levied taxes, or for which taxes are levied, on the appropriate tax roll used for the fiscal year or years during which the transfer occurred times the exempt amount, as determined in subparagraph (1) of this paragraph, times the fraction of each fiscal year or years remaining subsequent to the transfer of title. The assessor shall immediately transfer a statement of the pro rata exemption credit due to each municipal corporation which levied taxes or for which taxes were levied on the tax roll used for the fiscal year or years during which the transfer occurred and to the applicant.

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- (3) Each municipal corporation which receives notice of pro rata exemption credits pursuant to this subdivision shall include an appropriation in its budget for the next fiscal year equal to the aggregate amount of such credits to be applied in that fiscal year. Where a parcel, the owner of which is entitled to a pro rata exemption credit, is subject to taxation in said next fiscal year, the receiver or collector shall apply the credit to reduce the amount of taxes owed for the parcel in such fiscal year. Pro rata exemption credits in excess of the amount of taxes, if any, owed for the parcel shall be paid by the treasurer of a municipal corporation which levies such taxes for or on behalf of the municipal corporation to all owners of property entitled to such credits within thirty days of the expiration of the warrant to collect taxes in said next fiscal year.
- e. (1) Notwithstanding the provisions of paragraph a of this section, where a person who meets the requirements for an exemption pursuant to this ordinance, purchases property after the taxable status date but prior to the levy of taxes, such person may file an application for an exemption to the assessor within thirty days of the transfer of the title to such person. The assessor shall make a determination within thirty days after receipt of such application of whether the applicant would qualify for an exemption pursuant to this section on the assessment roll if title had been in the name of the applicant on the taxable status date applicable to such assessment roll. The application shall be made on a form prescribed by the state board.
- (2) If the assessor's determination is made prior to the filing of the tentative assessment roll, the assessor shall enter the exempt amount, if any, on the tentative assessment roll and, within ten days after filing such roll, notify the applicant of the approval or denial of such exemption, the exempt amount, if any, and the applicant's right to review by the board of assessment review.
- (3) If the assessor's determination is made after the filing of the tentative assessment roll, the assessor shall petition the board of assessment review to correct the tentative or final assessment roll in the manner provided in title three of article five of the Real Property Tax Law, with respect to unlawful entries, in the case of wholly exempt parcels, and with respect of clerical errors, in the case of partially exempt parcels, if the assessor determines that an exemption should be granted and, within ten days of petitioning the board of assessment review, notify the applicant of the approval or denial of such exemption, the amount of such exemption, if any, and the applicant's right to administrative or judicial review of such determination pursuant to article five or seven of the Real Property Tax Law, respectively.
- f. If, for any reason, a determination to exempt property from taxation is provided in paragraph e of this section is not entered on the final assessment roll, the assessor shall petition the board of assessment review to correct the final assessment roll.
- g. If, for any reason, the pro rata tax credit as provided in paragraph d of this section is not extended against the tax roll immediately succeeding the fiscal year during which the transfer occurred, the assessor shall immediately notify the municipal corporation which levied the tax or for which the taxes were levied of the amount of pro rata exemption credits for the year in which such transfer occurred. Such municipal corporation shall proceed as provided in subparagraph (3) of paragraph d of this section.
- h. If, for any reason, a determination to exempt property from taxation as provided in paragraph e of this section is not entered on the tax roll for the year immediately succeeding the fiscal year during which the transfer occurred, the assessor shall determine the pro rata tax exemption credit for such tax roll by multiplying the tax rate or tax rates for each municipal corporation which levied taxes or for which taxes were levied times the exempt amount and shall immediately notify such municipal corporation or corporations of the pro rata exemption credits for such tax roll. Such municipal corporation shall add such pro rata exemption credits for such property to any outstanding pro rata exemption amounts and proceed as provided in subparagraph (3) of paragraph d of this section.

### SECTION 4. Penalties

The making of any willful false statement in the application for an exemption under this ordinance shall be a violation thereof and a conviction for any such violation shall be punishable by a fine of not more than \$100.00 and shall disqualify the applicant or applicants from further exemption for a period of five years.

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### **SECTION 5. Separability**

Should any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional or unjust for any reason by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

### **SECTION 6. Inconsistency**

All resolutions or ordinances or portions thereof of the Town of Kirkwood not consistent with this ordinance in whole or in part shall be repealed.

### **SECTION 7. Effective Date and Period**

This ordinance shall take effect ten (10) days after the publication thereof and posting thereof by the Town Clerk pursuant to applicable provisions of Town Law, but shall apply only to the assessment roll to be filed in 1972 for real estate taxes to be levied by the Town of Kirkwood for the year 1974, and for years thereafter.