

OTR TAX NOTICE 2015-07

December 8, 2015

GUIDANCE ON ELIGIBILITY FOR DISTRICT HOMESTEAD DEDUCTION AND RELATED DISTRICT REAL PROPERTY TAX RELIEF PROGRAMS

This notice replaces and supersedes OTR Notice 2007-01.

The purpose of this notice is to provide guidance on the circumstances in which an individual can claim the homestead deduction, senior citizen or disabled relief for purposes of determining the real property tax imposed on the individual's home or residence. These benefits are summarized below.

Real Property Homestead Deduction

An individual, who is domiciled in the District and who owns and occupies a home there that is the individual's principal place of residence in the District, can qualify such home for the homestead deduction. D.C. Code § 47-849.

For a homeowner to benefit from the homestead deduction, he or she must file a Homestead Application (DC Form FP-100) with the Office of Tax and Revenue ("OTR"). This form may be downloaded from our website: <http://otr.cfo.dc.gov>. If the homeowner qualifies for the homestead deduction, OTR will reduce the assessed value of the home by the amount of the homestead deduction¹ prior to computing the yearly tax. D.C. Code § 47-850.

Assessment Cap Credit

Homeowners that qualify for the homestead deduction (and thus are domiciled in the District) also receive the assessment cap credit under D.C. Code § 47-864. The assessment cap credit provides that a real property tax bill will generally not increase by more than 10% above the prior year's bill. The credit only applies if the following additional conditions were met during the previous year:

- The home was not sold or transferred to a new owner for consideration;

¹ The amount of the homestead deduction is \$67,500, increased annually, beginning with Tax Year 2013, by a cost-of-living adjustment.

- There was no change in the zoning classification requested by the owner, which resulted in an increased value of the home;
- The previous assessment was not clearly erroneous; and
- There was no significant construction or rehabilitation to the home that caused a 10% or greater increase in its value.

Senior Citizen Tax Relief

Homeowners who are at least 65 years of age may also qualify for the senior citizen tax relief benefit under D.C. Code § 47-863. This benefit reduces a qualified homeowner's property tax by 50 percent. To receive the benefit, the following conditions must be met:

- The home of the senior citizen must qualify to receive the homestead deduction;
- The senior citizen must apply for the benefit by completing the Senior Citizen Tax Relief portion of the Homestead Application (DC Form FP-100);
- The senior citizen must own 50 percent or more of the home; and
- The total adjusted gross income of everyone living in the home, excluding tenants, must be less than \$125,000² for the federal tax year ending immediately before the beginning of the real property tax year for which the senior citizen deduction is to apply.

Disabled Homeowner Tax Relief

Homeowners who have been determined to be permanently and totally disabled by the Social Security Administration or who are receiving Federal or District Government disability payments may also qualify for a 50 percent real property tax reduction under D.C. Code § 47-863. To receive the benefit, the following conditions must be met:

- The home of the disabled individual must qualify to receive the homestead deduction;
- The disabled individual must apply for the benefit by completing the Disabled Tax Relief portion of the Homestead Application (DC Form FP-100);
- The disabled individual must own 50 percent or more of the home; and The total adjusted gross income of everyone living in the home, excluding tenants, must be less than \$125,000³ for federal tax year ending immediately before the beginning of the real property tax year for which the disabled deduction is to apply.

² This amount is subject to adjustment for inflation beginning with Tax Year 2015.

³ This amount is subject to adjustment for inflation beginning with Tax Year 2015.

Appeal OTR Decision

If OTR rejects an application or a re-confirmation of eligibility for the homestead deduction or the senior or disabled deduction, the applicant can appeal that rejection. The Homestead and Senior Citizen Tax Benefit Appeal Application is available on OTR's Web site at www.taxpayerservicecenter.com.

Definition of Domicile in the District

The above benefits are available only to individuals who are domiciled in the District. See D.C. Code §§ 47-849(1), 47-863(a)(3) and 47-864(d)(1). The term "domicile" means the place where an individual has his or her true permanent home or habitation, without any fixed or definite intent of abandoning it now or in the future, and to which the individual has the present intention of returning, after any absence regardless of the length. *Bainum v. Kalen*, 272 Md. 490, 497 (1974); *D.C. vs. Murphy*, 314 U.S. 441, 454-55 (1941).

An individual can have more than one home or residence, but he or she can have only one domicile. *Blount v. Boston*, 351 Md. 360, 367 (1998).

Domicile, once established outside the District, is presumed to continue until shown to have been changed. For example, a person who comes to the District to enter Federal governmental service for an indefinite period, does not necessarily acquire a District domicile, even when no abode is maintained in the state of origin, if this person always has a fixed and definite intention to return when the government service ends. *Murphy*, at 452-55.

Thus, to establish domicile in the District, persons who move into the District from other states must show clearly and unequivocally physical presence in the District and intent to abandon the former domicile and remain in the District for an indefinite period of time. *Sweeney v. District of Columbia*, 113 F.2d 25, 32-33 (1940).

Factors Establishing Domicile

An individual's intent is determined principally by his or her actions (objective factors) since mere statements by themselves can be self-serving. *Blount* at 368. Thus, the totality of an individual's circumstances must be reviewed. Generally, the two most significant objective factors are the

location of the individual's principal place of residence and where that individual votes or is registered to vote. *Murphy* at 456; *Blount* at 368-69; *Bainum* at 498. However, neither of these factors, standing alone, are controlling without more. Other factors include, but are not limited to, the degree an individual has retained relations (and not completely burned bridges) with his or her state of origin, such as retaining a place of abode, significant bank accounts, investments, and political, family, and other affiliations there, having a District driver's license, registering one's car in the District, the relations an individual has to churches, clubs, and lodges in the District to the exclusion of similar relations in the individual's state of origin, and the jurisdiction(s) to whom taxes are paid. A person's individual circumstances have a bearing on the actual weight given to these factors in determining the presence or absence of domicile. *Murphy* at 456; *Blount* at 368-70.

The payment of District income tax by an individual is not always an indicator of domicile in the District. The reason is that an individual who maintains a place of abode in the District for more than 183 days during the year must pay that tax, regardless of whether that individual is domiciled here or in the state of origin. Moreover, the District exempts both an employee of a Member of Congress ("staffer") who is also a *bona fide* resident of the Member's home state, as well as a Member of Congress, from paying District income tax. D.C. Code §§ 47-1801.04(17) and 47-1806.03.

Members of Congress and Spouses

Usually, a Member of Congress maintains his or her principal residence and registers to vote in the state that the Member represents or that contains the Member's congressional district ("home state"). Usually, the spouse of the Member will also register to vote in the Member's home state even if the spouse owns or co-owns a home in the District. Both the Member and the spouse continue to routinely vote in the state that the Member represents. In so doing, the couple is demonstrating that they are part of the community or body politic of the Member's home state and have not relinquished that domicile. Thus, both the Member and the spouse are domiciled in the Member's home state and not in the District of Columbia, and therefore they do not qualify for the District's homestead deduction or other benefits, such as the Assessment Cap Credit and Senior Citizens Tax Relief. *See Murphy* at 453-54.

Although the general rule in the District is that spouses have the same domicile, it is possible for a spouse of a Member of Congress to be domiciled in the District (as established by objective factors) for homestead deduction

purposes. *McGrath v. Zander*, 177 F.2d 649, 653 (1949); *Oxley v. Oxley*, 159 F.2d 10, 11 (1946); *Marcum v. Marcum*, 62 F.2d 871, 873 (1932). However, the spouse cannot be domiciled here if he or she votes in the Member's home state. Similarly, if an individual homeowner is not domiciled in the District, it is possible that the individual's spouse could qualify their home for the above homestead deduction and other tax benefits if the spouse is domiciled in the District and is a co-owner of the home.

Foreign Nationals

Foreign nationals with permanent visa status can legally form the intent to be domiciled in the District. Except as discussed below, foreign nationals without permanent visa status cannot legally form the intent to be domiciled in the District because they must leave the United States upon expiration of their visas.

The holder of a G-4 visa, although not granted permanent residency, may nevertheless be able to legally form the intent to be domiciled in the District. *Bonato v. District of Columbia*, 2010 CVT 10557 (D.C. Super. Ct. 2014). G-4 visa holders applying for these benefits shall provide a copy of their G-4 visa (front and back) together with a letter from their employer, an international organization, verifying their employment and term.

Out-of-State Individuals Moving to the District

Out-of-state individuals who move into the District and buy a home for the first time and who wish to clearly establish domicile in the District should consider promptly registering to vote in the District (if they are United States citizens) or, at least, canceling their voter registration in their state of origin, obtaining a District driver's license, and registering their car in the District. The reason is that their intent to remain in the District permanently, their place of voting, and the degree they have retained relations with their state of origin may not otherwise be clear.

The examples below illustrate the application of the principles discussed above.

Example 1:

A Member of Congress owns a house in the District and also maintains a residence in his home state. He actively votes in his home state. By maintaining a residence in the home state and actively voting there, the Member is demonstrating that he continues to be part of the body politic of

his home state. Additionally, District law exempts the Member from paying District income tax. Thus, the Member is a domiciliary of his home state. Because he is not domiciled in the District, the Member cannot claim the District's homestead deduction.

Example 2:

A husband owns a house jointly with his wife in the District where he and his wife reside. His wife is a Member of Congress and is domiciled in her home state. The husband also works in the District, pays District income taxes, and has a District driver's license. Both the husband and his wife choose to maintain their voter registrations in his wife's home state. The husband is domiciled in his wife's home state because he votes in the home state and he is married to his wife who is clearly domiciled in the home state. Thus, he cannot qualify for the District's homestead deduction.

Example 3:

The facts are the same as in Example 2, except the husband cancels his voter registration in the home state and registers to vote in the District. By registering to vote in the District, living in the District, obtaining a District driver's license and paying District income taxes, the husband has abandoned the domicile of the home state in favor of a District domicile. The husband is domiciled in the District and can qualify for the District's homestead deduction on their jointly-owned District home.

Example 4:

A staffer of a Member of Congress owns a house in the District, but she is registered to vote in the Member's home state where the staffer lived before coming to the District. The staffer does not own a house in the home state. District law exempts her from paying District income tax, and she pays income tax to the home state. She is a *bona fide* resident of the home state and cannot claim the District's homestead deduction.

Example 5:

The facts are the same as in Example 4 except that the staffer obtains a District driver's license. The result is the same as in Example 4.

Example 6: The wife, who is a staffer to a Member of Congress, lives in the District with her husband. The couple co-owns a home in the District and does not own a home in another jurisdiction. The wife votes in the Member's home state (from where she came), but the husband votes in the District.

The husband also has a District driver's license and has registered his automobile in the District. The husband is domiciled in the District, and the wife is not domiciled in the District. The above factors demonstrate that the husband has abandoned his domicile in the home state and is now domiciled in the District. Because the husband is domiciled in the District, he can claim the District's homestead deduction on behalf of the couple's jointly-owned home.

Example 7:

An administrative assistant to a Member of Congress owns a home in the District and no where else. The administrative assistant is originally from Maine, and the Member of Congress is from Nebraska. The administrative assistant has been living in the District for the past 10 years, has allowed her Maine voter registration to lapse, and has not registered to vote anywhere else. The administrative assistant has a District driver's license, pays District income taxes, and has a car registered in the District. Because the home is the administrative assistant's principal place of residence and she has exhibited other indicia of domicile, she is considered domiciled in the District and may claim the District's homestead deduction.

Example 8:

In 2004, a recent college graduate resided in Maryland, which is adjacent to the District. Maryland is where the college graduate's parents reside, where he attended college, and where he voted during the 2004 Presidential election. In November 2005, he moves to the District, takes a job with the Federal government and rents an apartment. He retains his Maryland driver's license, does not cancel his Maryland voter registration, and maintains his Maryland registration for his automobile. In June 2006, he buys a condominium unit located in the District for use as his personal abode and fills out a District application for the homestead exemption. In November 2006, he votes in Congressional elections in Maryland. He is considered domiciled in Maryland for 2006 despite having purchased a condominium unit in the District. Thus, he cannot claim the District's homestead exemption for the second half of TY 2006.

Example 9:

The facts are the same as in Example 8 except that the recent college graduate does not vote in the November 2006 Congressional elections in Maryland. By retaining ties to the home state of Maryland, he is considered domiciled in Maryland for 2006 because he has not clearly demonstrated an intention to abandon his domicile in Maryland. He cannot claim the

District's homestead exemption for the second half of TY 2006.

Example 10:

The facts are the same as in Example 9, except that the recent college graduate's Maryland driver's license expires in December 2006, and he then registers his car in the District and obtains a District driver's license. He remains eligible to vote in Maryland because he does not register to vote in the District or otherwise cancel his right to vote in Maryland. He is considered domiciled in Maryland for the second half of TY 2006 and is presumed to be domiciled in that state during the first half of TY 2007.

Example 11:

The facts are the same as in Example 10 except that the recent college graduate never registered to vote in Maryland. He is domiciled in Maryland during the second half of TY 2006 but is presumed to be domiciled in the District for TY 2007.

Example 12:

A career Foreign Service officer and his wife were re-assigned to the District in 2004. They had never previously lived here. The couple bought a condominium in the District in November 2006, obtained District driver's licenses, registered their car in the District, and opened their principal checking and savings accounts in the District. The couple has not maintained significant family, economic, or other relations with any other state for many years. However, in 2001, the Foreign Service officer visited Florida for a brief period (not more than 3 weeks) in 2001 to look at a prospective investment. During that visit he opened a Florida bank account containing \$50, registered to vote in Florida, and joined one of the major national political parties in Florida. He visited Florida briefly in 2002 and again in 2003 for a short period of time. He and his wife never previously lived in Florida, never owned real property or other investments in Florida, and did not have family in Florida. Since 2001, he has voted by absentee ballot in all national, state, and local elections in Florida. Florida does not impose an income tax. Despite voting in Florida elections, he and his wife never established permanent physical presence in Florida. He and his wife are domiciled in District and are entitled to claim the homestead deduction for TY 2007.

Example 13:

A U.S. soldier is a District domiciliary and pays District income taxes. She

owns a home in the District and correctly receives the homestead deduction. Thereafter, she is given orders to report to an overseas military base for an extended tour of duty. She does not rent her house, but returns to her house while on leave. Her house continues to qualify for the homestead deduction.

Example 14:

The facts are the same as in Example 13, except that the U.S. soldier rents her house while overseas. Because the house is no longer owner-occupied, the house does not qualify for the homestead deduction.

Example 15:

A U.S. airman has declared Florida as his state of legal residence on Form DD 2058 or equivalent, has physical presence in Florida, votes in Florida and pays no income tax to the District. The airman owns a house in the District. His house does not qualify for the homestead deduction.

Example 16:

A World Bank employee who holds a non-resident G-4 visa owns a house in the District which is her principal place of residence in the District. Because the employee only receives income that is exempt from Federal and District income tax, such as compensation from the World Bank, she does not file Federal or District income tax returns. As a foreign national, she cannot vote in the District. The employee obtains a District driver's license and registers her car in the District. The employee's house can qualify for the homestead deduction. The employee should include in her application a copy of the G-4 visa (front and back), together with a letter from the World Bank verifying her employment and the term thereof.

Example 17:

An alien with permanent resident status owns a house in the District. A permanent resident alien can legally form the intent to be domiciled in the District and have his permanent home in the District. However, he cannot vote; but he has a District driver's license, has lived in the District for 8 years, does not own a house elsewhere, and pays District income taxes. Additionally, his house in the District is his principal place of residence. His house therefore qualifies for the homestead deduction.

Example 18:

A homebuyer originally from Virginia buys a house in the District. At

settlement, she is offered the homestead deduction form to complete. She is not yet registered to vote in the District and has not yet obtained a District driver's license, District car registration or other documentation exhibiting her intent to be domiciled in the District. However, she fully intends to be domiciled in the District and that her new house be her permanent residence. In order to preliminarily qualify, she should check "Yes" in the applicable boxes and write "Pending" in the margin to the right, and she must within 30 days from settlement: register to vote in the District or at least cancel any voter registration in Virginia; obtain a District driver's license (if applicable); register her car in the District (if applicable); and file with her employer a new IRS Form W-4 indicating the District as the jurisdiction to which income taxes withholding will be paid (if applicable).

Example 19

A District domiciliary resides in a home in the District with his spouse and child. He secures employment in the U.S. Virgin Islands and relocates there. The term of employment is open-ended and does not end at a specific time. His spouse and child continue to reside at the home in the District, and he visits them periodically. He lists his District residence as his home address on his Federal income tax returns and maintains a bank account in the District. His automobile and other possessions remain in the District. He does not register to vote or obtain a driver's license in the Virgin Islands. After two and one half years, he resigns from his employment in the Virgin Islands and returns to his home in the District. He remains a domiciliary of the District during the time of his residence in the Virgin Islands and thus may claim the District's homestead deduction during this time.