



[§ 8131.](#) [§ 8132.](#) [§ 8133.](#) [§ 8134.](#) [§ 8135.](#) [§ 8136.](#) [§ 8137.](#) [§ 8138.](#) [§ 8139.](#) [§ 8140.](#) [§ 8141.](#)

# TITLE 9

## Counties

### County Taxes

#### CHAPTER 81. Limitations Upon Taxing Power

##### Subchapter II. Citizens Over 65 Years of Age

###### **§ 8131. Definitions [For application of this section, see 81 Del. Laws, c. 314, § 2].**

As used in this subchapter:

- (1) "Income" means all income from whatever source derived including realized capital gains and, in their entirety, pension, annuity, retirement, and Social Security benefits. For any tax year for which an exemption is claimed, income" is determined to be equal in amount to the income received during the pretax year.
- (2) "Pretax year" means the calendar year immediately preceding the "tax year."
- (3) "Resident" means one legally domiciled within the State for a period of 10 years immediately preceding October of the pretax year.
  - a. Mere seasonal or temporary residence within the State, of whatever duration, does not constitute domicile within the State for the purposes of this subchapter. Absence from this State for a period of 12 months is prima facie evidence of abandonment of domicile in this State. The burden of establishing legal domicile within the State is on the claimant.
  - b. For claimants establishing legal domicile in this state after December 31, 2018, only claimants who, as of June 30 immediately prior to the beginning of the county fiscal year, have been legally domiciled within the state for a period of at least 10 consecutive years are eligible to receive a credit.
- (4) "Tax year" means the calendar year in which the county real estate tax is due and payable.

9 Del. C. 1953, § 8131; [55 Del. Laws, c. 163, § 1](#) (<https://legis.delaware.gov/SessionLaws?volume=55&chapter=163>); [55 Del. Laws, c. 232](#) (<https://legis.delaware.gov/SessionLaws?volume=55&chapter=232>); [56 Del. Laws, c. 26, §§ 1, 2](#) (<https://legis.delaware.gov/SessionLaws?volume=56&chapter=26>); [81 Del. Laws, c. 314, § 1](#) (<https://legis.delaware.gov/SessionLaws?volume=81&chapter=314>);

###### **§ 8132. Qualifications and amount of exemption.**

(a) Every person, a resident of this State of the age of 65 or more years, having an income not in excess of \$3,000 per year and residing in a dwelling house owned by the person which is a constituent part of the person's real property, shall be entitled, on proper claim being made therefor, to exemption from taxation on such real property to an assessed valuation not exceeding \$5,000 in the aggregate, except that:

- (1) No such exemption shall be in addition to any other exemption to which said person may be entitled; and

(2) No such exemption shall be permitted where said person's spouse lives in said dwelling house and has an income in excess of \$3,000 per year.

(b) Nothing in this subchapter shall be construed to apply to property taxes levied within and by a municipality.

(c) Nothing in this subchapter shall be construed to apply to ditch taxes and sewer taxes.

9 Del. C. 1953, § 8132; 55 Del. Laws, c. 163, § 1 (<https://legis.delaware.gov/SessionLaws?volume=55&chapter=163>); 56 Del. Laws, c. 26, § 3 (<https://legis.delaware.gov/SessionLaws?volume=56&chapter=26>); 57 Del. Laws, c. 70 (<https://legis.delaware.gov/SessionLaws?volume=57&chapter=70>); 70 Del. Laws, c. 186, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>);

#### **§ 8133. Application for exemption.**

(a) No exemption from taxation on the valuation of real property as provided in this subchapter shall be allowed except on written application therefor, which application shall be on a form prescribed by the governing bodies of the respective counties and provided for the use of the claimants under this subchapter by the governing body of the taxing district in which such claim is to be filed.

(b) An application for exemption under this subchapter shall be filed with the assessor of the taxing district by a date determined by the taxing district, which shall not be earlier than 45 days prior to the last date of the pre tax year; provided, however, that unless the income of the applicant has changed to exceed the \$3,000 allowed, or unless the applicant no longer owns the dwelling which is a constituent part of the applicant's real property, or unless the applicant's spouse has income exceeding the \$3,000 maximum, annual renewal shall not be required to qualify under this subchapter.

9 Del. C. 1953, § 8133; 55 Del. Laws, c. 163, § 1 (<https://legis.delaware.gov/SessionLaws?volume=55&chapter=163>); 56 Del. Laws, c. 26, § 4 (<https://legis.delaware.gov/SessionLaws?volume=56&chapter=26>); 60 Del. Laws, c. 430, § 1 (<https://legis.delaware.gov/SessionLaws?volume=60&chapter=430>); 62 Del. Laws, c. 215, § 1 (<https://legis.delaware.gov/SessionLaws?volume=62&chapter=215>); 69 Del. Laws, c. 13, § 3 (<https://legis.delaware.gov/SessionLaws?volume=69&chapter=13>); 70 Del. Laws, c. 186, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>);

#### **§ 8134. Contents of application.**

Every fact essential to support a claim for exemption under this subchapter shall exist on September 1 of the pretax year. Every application by a claimant therefor shall establish that the applicant was, on September 1 of the pretax year:

- (1) A resident of this State for the period required;
- (2) Of the age of 65 or more years;
- (3) The owner of a dwelling house which is a constituent part of the real property for which such exemption is claimed;
- (4) Residing in said dwelling house.

Such applicant shall also establish that his or her income for the yearly period as provided by this subchapter did not exceed \$3,000, and that his or her spouse, if living in said dwelling house, does not have an income in excess of \$3,000.

9 Del. C. 1953, § 8134; 55 Del. Laws, c. 163, § 1 (<https://legis.delaware.gov/SessionLaws?volume=55&chapter=163>); 56 Del. Laws, c. 26, § 5 (<https://legis.delaware.gov/SessionLaws?volume=56&chapter=26>); 70 Del. Laws, c. 186, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>);

#### **§ 8135. Allowance of exemption.**

If an application is approved by the assessor, the assessor shall allow an exemption from taxation against the assessed valuation of the real property assessed to the claimant in the amount of the claim approved by the assessor.

9 Del. C. 1953, § 8135; 55 Del. Laws, c. 163, § 1 (<https://legis.delaware.gov/SessionLaws?volume=55&chapter=163>); 70 Del. Laws, c. 186, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>);

**§ 8136. Continuance of exemption.**

Any assessor may, at any time, require the filing of a new application or such proof as the assessor shall deem necessary to establish the right of a claimant to continued exemption. A claimant shall inform the assessor of any change in the assessor's status or property which may affect the assessor's right to continuance of exemption.

9 Del. C. 1953, § 8136; 55 Del. Laws, c. 163 (<https://legis.delaware.gov/SessionLaws?volume=55&chapter=163>); 56 Del. Laws, c. 26, § 6 (<https://legis.delaware.gov/SessionLaws?volume=56&chapter=26>); 69 Del. Laws, c. 13, § 1 (<https://legis.delaware.gov/SessionLaws?volume=69&chapter=13>); 70 Del. Laws, c. 186, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>);

**§ 8137. Tenants in common or joint tenants.**

(a) Where title to property on which an exemption is claimed is held by claimant and another or others, either as tenants in common or as joint tenants, claimant shall not be allowed an exemption against the claimant's interest in said property in excess of the assessed valuation of the claimant's proportionate share in said property, which proportionate share, for the purposes of this subchapter, shall be deemed to be equal to that of each of the other tenants, unless it is shown that the interests in question are not equal, in which event claimant's proportionate share shall be as shown.

(b) Nothing in this subchapter shall preclude more than 1 tenant, whether title be held in common or joint tenancy, from claiming exemption against the property so held, but no more than the equivalent of 1 full exemption in regard to such property shall be allowed in any year, and in any case in which the claimants cannot agree as to the apportionment thereof, the exemption shall be apportioned between or among them in proportion to their interest. Property held by husband and wife, as tenants by the entirety, shall be deemed wholly owned by each tenant, but not more than 1 exemption in regard to such property shall be allowed in any year.

(c) Right to claim exemption under this subchapter shall extend to property the title to which is held by a partnership to the extent of the claimant's interest as a partner therein, and by a guardian, trustee, committee, conservator or other fiduciary for any person who would otherwise be entitled to claim exemption under this subchapter, but not to property the title to which is held by a corporation.

9 Del. C. 1953, § 8137; 55 Del. Laws, c. 163, § 1 (<https://legis.delaware.gov/SessionLaws?volume=55&chapter=163>); 70 Del. Laws, c. 186, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>);

**§ 8138. Rules and regulations.**

The Department of Finance of New Castle County or Board of Assessments for Kent County or Board of Assessments for Sussex County may promulgate such rules and regulations and prescribe such forms as they shall deem necessary to implement this subchapter. They may, in their discretion, eliminate the necessity for sworn application, in which event all declarations by the claimant shall be considered as if made under oath and the claimants, as to false declarations, shall be subject to the penalties as provided by law for perjury.

9 Del. C. 1953, § 8138; 55 Del. Laws, c. 163, § 1 (<https://legis.delaware.gov/SessionLaws?volume=55&chapter=163>); 56 Del. Laws, c. 26, § 7 (<https://legis.delaware.gov/SessionLaws?volume=56&chapter=26>);

**§ 8139. Oaths.**

Each assessor and collector and his or her duly designated assistants may take and administer the oath, where required, on any claim for exemption under this subchapter and no charge shall be made for the taking of any affidavit or the preparation of any form required by this subchapter.

9 Del. C. 1953, § 8139; 55 Del. Laws, c. 163, § 1 (<https://legis.delaware.gov/SessionLaws?volume=55&chapter=163>); 70 Del. Laws, c. 186, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>);

**§ 8140. Appeals.**

An aggrieved taxpayer may appeal from the disposition of an exemption claim under this subchapter in the same manner as is provided for appeals from assessments generally.

9 Del. C. 1953, § 8140; 55 Del. Laws, c. 163, § 1 (<https://legis.delaware.gov/SessionLaws?volume=55&chapter=163>);

**§ 8141. Exemption from property taxes on real estate in Kent County.**

The provisions of this chapter notwithstanding, the Kent County Levy Court shall by ordinance provide for the exemption of real property owned by citizens over age 65 from real estate taxes to such degree and in such manner as it determines will best promote the public welfare; provided, however, that any such ordinance adopted shall include language substantially similar to that of § 8133(b) of this title.

66 Del. Laws, c. 148, § 1 (<https://legis.delaware.gov/SessionLaws?volume=66&chapter=148>); 69 Del. Laws, c. 13, § 2 (<https://legis.delaware.gov/SessionLaws?volume=69&chapter=13>);

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[Delaware General Assembly](http://legis.delaware.gov/) (<http://legis.delaware.gov/>).

[Judicial](http://courts.delaware.gov/) (<http://courts.delaware.gov/>).

[Executive](http://delaware.gov) (<http://delaware.gov>).

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