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The Homestead Circuit Breaker: Implications for Local Tax Offices

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Opportunities continue to expand for North Carolinians seeking property tax relief. Tax year 2009 will witness the debut of two new programs aimed at assisting elderly and disabled taxpayers: the disabled veterans exclusion and the "circuit breaker" exclusion. This bulletin focuses on the circuit breaker program, both because of its novel approach to property tax reduction and because of the special preparations it may require of local tax offices across the state.

What is the circuit breaker program?

The *circuit breaker* is a deferred tax program that caps the current property tax obligation for eligible taxpayers at a percentage of their income.[1] Taxes, interest, penalties, and fees in excess of the circuit breaker tax "ceiling" are deferred and are not payable until a disqualifying event occurs, most commonly when the property changes hands.

The basic circuit breaker concept is not new to the world of property tax. At least eighteen states offer like programs, which are intended to function similarly to the devices that prevent electrical circuits from overloading.[2] In the property tax context the circuit breaker is intended to limit a taxpayer's tax liability to a certain percentage of his or her income, thereby preventing a homeowner from being "overloaded" with tax bills.

The administrative burden of North Carolina's circuit breaker is likely to far outweigh its financial implications. Roughly one in ten North Carolina homeowners will satisfy the age and income

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1. N.C. Gen. Stat. § 105-277.1B (hereinafter G.S.). To improve the readability of this bulletin, subsequent citations to this statute are omitted.

2. Karen Lyons et al., Center on Budget and Policy Priorities, The Property Tax Circuit Breaker: An Introduction and Survey of Current Programs (2007).

requirements for the circuit breaker.[3] That amounts to more than 200,000 potential circuit breaker applicants each year, a number which could cause staffing concerns for local tax officials. In contrast, the circuit breaker's resulting 2009 tax loss for local governments is estimated at $7.8 million,[4] a minuscule percentage of the $7 billion in property taxes collected every year by North Carolina cities and counties.[5]

Why such a limited financial consequence from such a large pool of eligible taxpayers? The answer depends in part on the unique details of the North Carolina program and in part on the availability of other property tax relief programs for the same category of homeowners. In most states that employ circuit breakers, taxes in excess of the circuit breaker tax ceilings are either returned to the taxpayer by way of a state income tax credit, or they are simply forgiven, never to be billed again. This will not be the case in North Carolina. As explained below on page 5, taxes in excess of the circuit breaker tax ceiling are deferred for later collection and, until the collection date, create a lien on the taxpayer's home. General Assembly staff who analyzed the likely implications of the North Carolina circuit breaker assume that a significant percentage of eligible taxpayers will avoid selecting the circuit breaker as their preferred property tax relief program because of an unwillingness to subject their home to a tax lien or to pass along a deferred tax obligation to their heirs.[6] Many of these taxpayers may choose instead the reduction in property taxes without deferral available under the previously existing elderly or disabled homestead exclusion (hereinafter, E&D exclusion).[7]

Who is eligible?

The circuit breaker is limited to North Carolina residents who own their own homes and are either totally and permanently disabled or at least sixty-five years of age as of the January 1 preceding the beginning of the tax year.[8] Homeowners must earn no more than 150 percent of the income eligibility limit for the E&D exclusion, which was set at $25,000 for tax year 2008. This limit increases each year at the same percentage as the cost-of-living adjustment to federal Social Security benefits.[9] The circuit breaker income limit for tax year 2009 will be $38,400.[10] Note that a homeowner may

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3. United States Census Bureau, 2006 American Community Survey (Detailed Tables), http://factfinder.census.gov/servlet/DTGeoSearchByListServlet?ds_name=ACS_2006_EST_G00_&_lang=en&_ts=239901409601 (last visited Sept. 19, 2008).

4. North Carolina General Assembly, Session 2007, Legislative Fiscal Note, H 1499 (4th ed., July 31, 2007) (hereinafter, Legislative Fiscal Note).

5. North Carolina Department of Revenue, *Local Property Tax Levies by Location of Property and Tax Jurisdiction*, Statistical Abstract of North Carolina Taxes 2007, www.dor.state.nc.us/publications/abstract/2007/table65-66.pdf (last visited Sept. 19, 2008).

6. Legislative Fiscal Note, *supra* note 4.

7. G.S. 105-277.1. For 2009 this benefit is available to homeowners who earn $25,600 or less and who are either disabled or at least sixty-five years of age.

8. The circuit breaker specifically adopts the definitions from the elderly and disabled homestead exclusion program, including the definition of *totally and permanently disabled*: a person with "a physical or mental impairment that substantially precludes him or her from obtaining gainful employment and appears reasonably certain to continue without substantial improvement throughout his or her life." G.S. 105-277.1(b)(4) and 105-277.1B(b).

9. G.S. 105-277.1(a2).

10. Memorandum from David D. Duty, Property Tax Division, North Carolina Department of Revenue, to County Assessors (July 1, 2008) (setting forth income eligibility limits for the 2009 homestead exclusion and circuit breaker).

benefit from only *one* of the three programs described by the North Carolina General Assembly as "property tax relief": the E&D exclusion, the circuit breaker, or the new disabled veterans exclusion.[11] The practical implications of this limitation are discussed below on page 8.

Permanent Residence

Eligible taxpayers may only apply the circuit breaker to their permanent residences. Both the circuit breaker and the E&D exclusion define *permanent residence* as

> A person's legal residence. It includes the dwelling, the dwelling site, not to exceed one acre, and related improvements. The dwelling may be a single-family residence, a unit in a multi-family residential complex, or a manufactured home.[12]

A homeowner who owns more than one acre of property may benefit from the circuit breaker, but the program's tax ceilings will not apply to the excess property.

The circuit breaker requires taxpayers to have both owned and occupied a property as their permanent residence for at least five years. Unlike other deferred tax programs such as the present-use classification, North Carolina's version of the circuit breaker does not allow a continuation exception for new property owners. The fact that a new owner of circuit breaker property is otherwise eligible to participate does not preclude that owner from the five-year ownership and residency requirement. For example, assume Lynn has been deferring taxes under the circuit breaker and then sells her house to Molly, who is sixty-six years old and earns less than the income limit. Even if Molly immediately begins to use the house as her permanent residence, she must wait five years before she too can defer taxes under the circuit breaker.

Manufactured homes may qualify for the circuit breaker, regardless of whether the structure is listed as personal property or real property. The distinction between real property and personal property has important consequences for the collectability of the deferred taxes, however. Because there would be no real property on which the deferred taxes could become a lien, in the event of a disqualifying sale, the tax collector's only remedy to collect those taxes would be to levy or attach the personal property of the manufactured homes' original or new owner.

Income

Taxpayers must report their income for the preceding calendar year, meaning an individual's eligibility for the circuit breaker in tax year 2009 will be based on his or her 2008 income. For both the circuit breaker and the E&D exclusion, as of July 1, 2008, *income* is defined as

> All moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. For married applicants residing with their spouses, the income of both spouses must be included, whether or not the property is in both names.[13]

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11. For the definition of "property tax relief," see G.S. 105-277.1(b)(3), as amended by S.L. 2008-107 (H 2436). This same bill created the disabled veterans exclusion, to be codified as G.S. 105-277.1C, and added to each of the three types of property tax relief programs the restriction that a taxpayer may not benefit from more than one program.
12. G.S. 105-277.1(b)(3).
13. G.S. 105.277.1(b)(1a).

Prior to July 1, 2008, income was based on a taxpayer's adjusted gross income as calculated on his or her federal income tax return, plus all other sources of income except gifts and bequests from family members. The federal adjusted gross income calculation permits reductions for business losses, capital losses on investments, and certain expenses including alimony, student loan interest, and tuition and fees. The new definition of income under the circuit breaker and the E&D exclusion ignores such expenses, meaning that taxpayers who claim a substantial amount of these losses or expenses could lose their eligibility in 2009 even if their base income does not change.[14]

What if more than one person owns the property?

Under the circuit breaker, different eligibility rules apply for property owned by spouses and for property owned by all other types of co-owners.

The circuit breaker's rule for spouses is the same rule as applied by the E&D exclusion: so long as *one* spouse satisfies all of the eligibility requirements, property owned by the spouses as tenants by the entirety is eligible for the full circuit breaker benefit even if the other spouse fails the age, disability, or residency tests.

The circuit breaker addresses all other property co-owners as follows: for the benefit to apply, *all* co-owners must qualify for and elect the circuit breaker. The circuit breaker cannot be combined with other forms of property tax relief on the same parcel.[15] If one co-owner applies for the circuit breaker, all co-owners must do so, or else none of them may receive the benefit.[16] This is an important distinction from the E&D exclusion and the disabled veterans exclusion programs, both of which allow different co-owners to choose either of those two forms of property tax relief.

How do these rules work in practice? If Alice, sixty-five, and Bob, sixty-two, are married and have owned their permanent residence for five years as tenants by the entirety, their property is eligible for the circuit breaker so long as their combined income is below $38,400. If Alice and Bob are not married, Alice cannot seek the circuit breaker because Bob is too young to qualify. If Alice and Bob are not married but are both over sixty-five, they each must elect the circuit breaker for the property to be eligible. If Bob prefers to rely on the E&D exclusion or the disabled veterans exclusion, Alice cannot receive the circuit breaker benefit. She could, however, apply for the either the E&D exclusion or the disabled veterans exclusion, without worrying about which benefit Bob elects.

How does the circuit breaker benefit taxpayers?

The circuit breaker is unique among North Carolina's seven deferred tax programs in that the benefit to taxpayers is directly related to their individual incomes. The six other deferred tax programs calculate the amount of deferred taxes allowed based on a reduction in the property's

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14. The North Carolina General Assembly has directed its Revenue Laws Study Committee to investigate the effect of this new income definition. S.L. 2008-146 (S 1878).

15. However, it is possible for one parcel to benefit from the circuit breaker and another property tax program such as present-use valuation. For example, assume a taxpayer owns, resides on, and farms his or her twenty-acre property. If he or she otherwise satisfies the requirements for both benefits, the circuit breaker could apply for the one acre on which his or her home sits and present-use valuation would apply for the nineteen acres farmed.

16. One explanation for this distinction is the fact that the circuit breaker, unlike the other two programs for property tax relief, creates a lien on an eligible property. Absent the "all-or-none" requirement, a single co-owner could unilaterally create a lien on the property without the consent or knowledge of his or her fellow co-owners.

assessed value. Under the circuit breaker, the amount of deferred taxes allowed is calculated based on a taxpayer's income: as the taxpayer's income rises, the amount of taxes that may be deferred decreases, and vice-versa.

Taxpayers eligible for the circuit breaker may defer all taxes above one of two tax "ceilings": taxpayers with income up to 100 percent of the homestead exclusion income eligibility may defer all taxes on their qualifying property that exceed four 4 percent of their total income. Taxpayers with income between 100 percent and 150 percent of the homestead exclusion income eligibility may defer all taxes on their qualifying property that exceed 5 percent of their income.[17]

Table 1 applies these tax ceilings to the income limits in place for 2009. All taxes in excess of the 4 or 5 percent tax ceilings are deferred and become a lien on the related property as of the January 1 listing date.

Table 1: Income Limits and Tax Ceilings

If a taxpayer's 2008 income is . . .	Then the taxpayer's 2009 property taxes are limited to . . .
Between $0 and $25,600	4% of the taxpayer's income
Between $25,601 and $38,400	5% of the taxpayer's income
$38,401 and greater	No limit—Does not qualify

For example, assume Tom has an eligible income of $30,000 in 2008. His circuit breaker tax ceiling for 2009 would be $1,500, which is 5 percent of his income. If the property taxes on Tom's qualifying residence were $2,000, the bill would total only $1,500. The remaining $500 in property taxes would be deferred.

One of several unusual characteristics of the circuit breaker is the fact that the presence of co-owners will generally increase the total amount of property taxes that a taxing unit may collect on a specific parcel in a given year. In other words, the more co-owners that are involved, the fewer taxes that will be deferred.

Consider another example. If the taxes on Ann's home are $2,000 and she qualifies for a $1,000 circuit breaker tax ceiling, she will be able to defer $1,000 in property taxes. The taxing unit will be able collect only $1,000 for this year. However, if Ann co-owns her home equally with her sister Barbara and they both qualify for circuit breaker tax ceilings of $1,000, no taxes will be deferred because their current tax bill will not exceed the sum of their individual tax ceilings. The taxing unit will be able to collect the entire $2,000 tax bill, double what would have been collectible this year if Ann had been the sole owner of her house.

17. The relationship between income and deferred taxes prompted a change to the privacy provisions that otherwise prohibit making public any information relating to a taxpayer's income. G.S. 153A-148.1(a) and G.S. 160A-208.1(a) were amended to allow publication of the taxes owed and taxes deferred under the circuit breaker program, despite the fact that armed with that information and the circuit breaker tax ceiling percentages one could calculate the taxpayer's income. For example, if a taxpayer's current taxes are capped at $1,500 under the circuit breaker program, that figure must represent either 4 or 5 percent of her income. Dividing $1,500 by .04 produces an income of $37,500; that income is too great for the four percent tax ceiling, which tops out at $25,600 for 2009. One then knows that the taxpayer must be subject to the 5 percent tax ceiling; divide $1,500 by .05, and it reveals that the taxpayer earned $30,000 in the prior calendar year.

The circuit breaker tax ceiling applies to everything included in the broad definition of "taxes" under North Carolina General Statutes 105-273(15) (hereinafter G.S.). Late listing penalties, interest, fees, and costs, such as returned check fees and advertising expenses, are all subject to the circuit breaker limitations. This means that once a taxpayer has been billed up to the circuit breaker tax ceiling, any additional penalties, interest, fees, or costs must be added to the deferred taxes for that year and are not due and payable until a disqualifying event occurs.[18]

Return to the example of Tom, who qualifies for a $1,500 circuit breaker tax ceiling and defers $500 in taxes for 2009. If Tom does not pay his 2009 property tax bill of $1,500 by January 6, 2010, the interest that begins to accrue is not added to his outstanding 2009 property taxes. Instead, the interest will be added to the taxes that were deferred under the circuit breaker. If a tax collector were to pursue enforced collection remedies against Tom taxpayer for his 2009 property taxes, the total amount that the tax collector could recover would be limited to $1,500. The costs related to the enforced collection remedies would also be added to Tom's deferred taxes for 2009.

What happens to the deferred taxes?

As of the 2008 tax year, the payment and collection of deferred taxes are consistent across all seven deferred tax programs.[19] Deferred taxes are a lien on the underlying property, but they are not due and payable until a disqualifying event occurs. Interest accrues on deferred taxes as if they had not been deferred.

Continue with the example above, in which Tom was eligible to defer $500 in 2009 property taxes under the circuit breaker. Those deferred taxes would be a lien on the property as of January 1, 2009, and would begin accruing interest on January 6, 2010, even though they would not be due and payable until a disqualifying event occurs.

Disqualifying Events

The definition of *disqualifying event* varies in meaning among the various deferred tax programs. For the circuit breaker, a disqualifying event generally occurs when a property owner dies, transfers the property, or stops using it as his or her permanent residence. As always, there are exceptions to this general rule. If through death, divorce, or transfer, an eligible property owner's share passes to a co-owner or the owner's spouse who occupies the property as a permanent residence, no disqualifying event occurs, and the deferred taxes will not yet be due and payable. For example, if eligible co-owner Alice dies and ownership passes to her co-owner Barbara, no disqualifying event occurs. Because Barbara had to be circuit breaker eligible for her co-owner Alice to be eligible, Barbara can continue deferring her property taxes under the circuit breaker without interruption.

What if circuit breaker eligible owner Alice dies and ownership passes to her husband, Bob, who is too young to qualify? So long as Bob occupies the property as his permanent residence, no disqualifying event occurs. This constitutes a "gap" in deferral, meaning the property is not currently eligible for the circuit breaker but, because no disqualifying event occurred, the deferred

18. The definition of "taxes" under G.S. 105-273(15) does not include solid waste fees, special assessments, motor vehicle license taxes, or privilege license taxes. These charges may be billed to a taxpayer without regard to the taxpayer's circuit breaker tax ceiling.

19. *See, e.g.*, G.S. 105-277.1D and 105-365.1.

taxes will not be due and payable. Gaps may be caused by the transfer of property to a co-owner or spouse (as in the above example), by an increase in income that renders a property owner ineligible, or by the failure of a property owner to file the annual circuit breaker application.[20]

When a disqualifying event does occur, the *three* most recent years of deferred taxes plus the accrued interest on those taxes are immediately due, payable and delinquent, with one exception. When the disqualifying event is the death of the property owner, the three years of deferred taxes and interest are not delinquent until the first day of the ninth month following the owner's death, presumably to allow time for the estate to be settled. [21]

Deferred Tax Liability

Who is liable for deferred taxes when they become payable? Prior to the 2008 legislative session, there was confusion as to whether the former owner or the current owner was liable for deferred real property taxes that became due after a transfer of ownership. In the 2008 session the General Assembly created G.S. 105-365.1, which details when and against whom enforced collection remedies may be pursued. Although this new statute is open to interpretation, it likely creates personal liability for *both* the transferee and the transferor when deferred taxes become due and payable after a disqualifying transfer.

G.S. 105-365.1 takes two important actions relevant to deferred taxes. First, it states that the taxpayer who owns a property on the date taxes become delinquent is the taxpayer personally liable for those taxes. Second, it states that deferred taxes are not delinquent until the date of the disqualifying event. Thus, if the disqualifying event is a sale, a seller could be personally liable because, as of the beginning of the sale date, he or she was still the owner of record. G.S. 105-365.1 states further that "any subsequent owners" are also liable for delinquent taxes, meaning that a buyer could be personally liable for the deferred taxes, too. To satisfy the deferred tax obligation after a disqualifying transfer, a tax collector therefore could levy or attach any personal property owned by either the current real property owner or the immediate prior owner. Regardless, a tax collector may always pursue foreclosure remedies against the real property itself.

A disqualifying event creates liability not only for deferred taxes but also for the full amount of taxes owed on the property without regard to the circuit breaker tax ceiling for the tax year that begins in the calendar year of the disqualifying event.[22] For example, if an eligible property owner sells the property to his or her ineligible son on October 1, 2012, the son will be liable for deferred taxes and accrued interest from the years 2009, 2010, and 2011, as well as the full amount of 2012 property taxes. Although the deferred taxes and interest are immediately delinquent, the 2012 taxes will not become delinquent until the standard interest accrual date of January 6, 2013.

Property owners who wish to pay off deferred taxes, perhaps to extinguish the lien and clear title for a sale, may do so without affecting the property's continuing eligibility for the circuit breaker.[23]

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20. When a gap is caused due to a change in property ownership, a question arises as to whether the property may remain in the circuit breaker for the pending tax year despite the fact that its new owner is not eligible for the program. Under G.S. 105-285(d), the answer depends on when in the year the ownership transfer occurs. If the transfer occurs prior to July 1, the start of the new tax year, the property loses circuit breaker eligibility for that new tax year. If the change occurs after July 1, the property may remain in the circuit breaker for that entire tax year.

21. For example, if an eligible owner dies in December of 2009, the deferred taxes will not be delinquent until September 1, 2010.

22. G.S. 105-277.1D(b).

23. *Id*. This change affects all of the seven deferred tax programs, some of which previously considered payment of deferred taxes to be a disqualifying event.

How should my office prepare for the circuit breaker?

Regardless of size, all local tax offices that collect property taxes need to start thinking about the new circuit breaker requirements long before tax year 2009 begins. The notice, application, and record-keeping requirements may require substantial changes in staffing and operating procedures.

Durham County, for example, has doubled its staff that processes exemption requests from two to four people, in anticipation of the increased application and public relations burden that tax administrator Kimberly Simpson and her staff expect from the circuit breaker. Simpson reports that after the income eligibility level for the E&D exclusion increased from $20,500 to $25,000 in 2008, Durham County received nearly 1,000 additional applications. Two-thirds of those applications needed follow-up with taxpayers to obtain the required income information. She expects two or three times that increase in applications for the circuit breaker, up to 3,000 additional applications, in light of the program's much higher income eligibility level relative to the E&D exclusion.

William "Pete" Rodda, the tax assessor and collector for Forsyth County, anticipates that many taxpayers will prefer to apply in person for the circuit breaker rather than work through the lengthy property tax relief application by themselves. To accommodate this need, Rodda's office plans to set aside several cubicles as interview space in which tax office employees can privately discuss with interested taxpayers the three property tax relief options—the circuit breaker, E&D exclusion, and disabled veterans exclusion.

Notices

To help inform taxpayers of their new tax relief options, tax assessors are required to provide an explanation of the circuit breaker and the E&D exclusion annually to all taxpayers.[24] A copy of the notice developed by the Department of Revenue (DOR) is the first document attached at the end of this bulletin. Although this notice may be printed on the abstracts mailed to taxpayers, it contains a large amount of text, likely making it more practical to mail a separate information sheet with the abstracts.

In addition, taxpayers who have participated in the circuit breaker must receive a notice each year by September 1 of the "accumulated sum of deferred taxes and interest."[25] Although this language could require the notice to include deferred taxes for all years in which the taxpayers participated in the circuit breaker, it is apparently limited by language from earlier in the same subjection that requires the taxing unit to carry only three years of deferred taxes on its books. There are, however, several reasons that a taxing unit may be wise to maintain records of all deferred taxes and not just those from the past three years. See the discussion on page 9 below. The most efficient method to satisfy the notice requirement likely will be to include the deferred tax and interest totals on the taxing unit's annual property tax bills, rather than to develop a new notice form just for this purpose. That assumes, of course, that the taxing unit delivers its bills to taxpayers prior to September 1 each year.

Applications

The circuit breaker requires an annual application, primarily because each year's deferred tax calculation depends on a taxpayer's most recent annual income. Applications for the three categories of property tax relief—the circuit breaker, the E&D exclusion, and the disabled veterans exclusion—

24. G.S. 105-309(f).
25. G.S. 105-277.1B(h).

are due by June 1. DOR has developed a single application for all three programs, a copy of which is the second document attached at the end this bulletin. DOR does not explicitly state how to distribute this application. Durham County, as an example, plans to revise its annual listing form to inquire if taxpayers are interested in any of the three property tax relief programs; taxpayers who would like more information will be mailed the new DOR application.

As with all exemption and exclusion applications, "upon showing of good cause" late applications may be accepted.[26] Exactly what constitutes "good cause" is debatable, but it likely requires an excuse beyond forgetfulness. Regardless of how compelling their excuses may be, taxpayers cannot retroactively seek circuit breaker eligibility for prior tax years.[27] Note that tax assessors and collectors are not authorized to approve late applications; action by DOR, the taxing unit's governing board or council, or the county board of equalization and review is required to approve a late application.

Depending on their income, taxpayers may qualify for more than one type of property tax relief. Before they receive their tax bills, how can taxpayers determine which program will benefit them the most? In short, they can't, which is why the DOR application permits taxpayers to conditionally apply for all three property tax relief programs. Some counties may wait to determine eligibility until after the tax bills are calculated; other counties plan to work with their taxpayers to determine eligibility as soon as they receive their taypayers' applications. Once eligibility is determined, a tax assessor must inform applicants if they qualify for any or all of the property tax relief programs and learn which program they prefer. Regardless of the methods used, the necessary taxpayer communication will create a significant burden on local tax office staff.

With several property tax relief options available, confused taxpayers are likely to turn to local tax officials for guidance. When this occurs, tax officials should remember the following rule: inform, don't advise. Tax assessors cannot counsel taxpayers as to the "best" property tax relief program. The program that will be most appropriate for an individual taxpayer depends on a long list of factors that vary from taxpayer to taxpayer, most of which are beyond a tax official's knowledge and expertise: financial condition, health, family situation, and risk tolerance, to name a few.

Instead of recommending one property tax relief program over another, tax officials should simply inform each taxpayer of the current and deferred taxes under each of the property tax relief programs available based on the taxpayer's property value and income. It is up to the taxpayer to then determine the relative merits of the deferred tax lien under the circuit breaker versus the straightforward reduction in property taxes under the E&D and disabled veterans exclusions.

Record Keeping

The record-keeping burden on local tax offices caused by the circuit breaker will be substantial, in part because tax collectors should now consider keeping records of all deferred taxes for as long it takes for a disqualifying event to occur. Several possible situations, discussed below, could create the need for lengthy record keeping.

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26. G.S. 105-282.1(a1).

27. G.S. 105-282.1(a1) limits late applications to property taxes levied in the calendar year in which the application is filed. Contrast this limitation with a taxpayer's ability to seek retroactive circuit breaker eligibility after receiving a discovery bill for unlisted property, discussed in the text below.

First, because gaps in deferral are possible, the three years of deferred taxes that become delinquent after a disqualifying event may not be from the three years immediately preceding the disqualifying event—they could be from tax years long since past. Nothing in the circuit breaker authorization statute limits how long a gap may continue. A property owner could participate in the circuit breaker from 2009 to 2015 and then decide to instead use the E&D exclusion for the next ten years. If that owner were to die in 2025 and ownership were to pass to his or her ineligible daughter, the disqualifying event would trigger an obligation to pay deferred taxes that are more than a decade old—specifically, the years 2015, 2014, and 2013.[28]

Second, a tax collector may not receive timely notice of a disqualifying event or a change in eligibility. Depending on how much time passes before the tax collector learns the true facts about a property, more than three years of deferred taxes may eventually be due and payable. Assume that an eligible property owner participates in the circuit breaker for three years and then decides to transfer a 50 percent share in his or her property to a son who lives in Virginia. This would constitute a disqualifying event. However, the original property owner may fail to inform the tax collector of the change in ownership status and continue to receive circuit breaker benefits. If the tax collector learns of the son's ownership five years later, the tax collector will be entitled to collect *eight* years of deferred taxes: the five years during which the property was ineligible plus the three years preceding the disqualifying change in ownership.

Finally, discovery of unlisted property may also require a tax collector to delve into past years to determine the appropriate amount of deferred taxes. Although a taxpayer who does not apply for the circuit breaker cannot retroactively seek eligibility for his or her listed property in prior tax years, this is not the case with unlisted property. If, for example, Terry receives a discovery tax bill for her previously unlisted residence, she may appeal the assessment on the basis that she should have been eligible for the circuit breaker for tax years now being billed. If Terry would have satisfied the ownership, residency, and income requirements for any or all of the years her property was not listed, she should only be billed on the discovered property up to the applicable circuit breaker tax ceiling for each of those years. If discovery penalties applied, they would also be subject to the circuit breaker tax ceiling.[29] These types of appeals are limited by the effective date of the circuit breaker legislation; of course, a taxpayer cannot seek circuit breaker benefits for tax years prior to 2009.

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28. The ten-year statute of limitations in G.S. 105-378(a) would not bar enforced collection procedures on these deferred taxes, despite the fact they arose more than ten years ago. That statute of limitations begins to run from the date taxes are *due*; under the new G.S. 105-277.1D(b), deferred taxes are not due and payable until the date of a disqualifying event, which in this example occurred in 2025.

29. Under permanent listing systems, real property itself is not subject to discovery penalties. G.S. 105-303(b)(3). However, such penalties do apply to the failure to furnish an assessor with information concerning improvements to real property, including the construction or placement of a permanent residence that could qualify for the circuit breaker. Mobile homes that are considered personal property are also subject to listing penalties. The tax and the listing penalty should be combined and then compared to the applicable circuit breaker tax ceiling for the year in question. Any amount in excess of that ceiling must be deferred. However, any tax paid in prior years relating to the parcel on which the improvements were discovered do not count toward the circuit breaker tax ceiling for those years. For example, assume that Tom owns a lot on which he paid $500 in property taxes for 2009. If, in 2010 Durham County discovers that Tom built a house on the lot that was complete as of January 1, 2009, and sends Tom a discovery bill for $1,000, he could retroactively apply for the 2009 circuit breaker for that discovery. If Tom is found to have been eligible for a $750 circuit breaker tax ceiling for 2009, he is not permitted to apply the original $500 2009 property tax payment toward that tax ceiling. The 2009 circuit breaker tax ceiling would only apply to the $1,000 discovery bill.

Conclusion

While local finance offices may not feel much of an impact when the new circuit breaker debuts in 2009, local tax offices surely will. The substantial increase in homeowners eligible for property tax relief combined with the likelihood of taxpayer confusion may strain the resources of city and county tax officials across the state. Implementation worries could grow if the General Assembly raises the circuit breaker's income eligibility limits or increases its benefits, as has been done with other tax relief programs in recent years. Local tax offices can minimize the potential staffing and documentation concerns by educating their employees about the new program and anticipating the needs of newly eligible taxpayers.

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NOTICE:

INFORMATION CONCERNING PROPERTY TAX HOMESTEAD EXCLUSION FOR ELDERLY OR DISABLED AND CIRCUIT BREAKER DEFERMENT

General Statute 105-277.1 Property Tax Homestead Exclusion For Elderly Or Disabled Persons:

North Carolina excludes from property taxes a portion of the appraised value of a permanent residence owned and occupied by North Carolina residents who are at least 65 years of age or are totally and permanently disabled, and whose income does not exceed (assessor insert amount). The amount of the appraised value of the residence that may be excluded from taxation is the greater of twenty-five thousand dollars ($25,000) or fifty percent (50%) of the appraised value of the residence. Income means all moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant.

If you received this exclusion last year, you do not need to apply again unless you have changed your permanent residence. If you received the exclusion last year but the property no longer qualifies for any reason, please notify the assessor. Failure to notify the assessor that the property no longer qualifies for the exclusion may cause the property to be subject to discovery with penalties and interest pursuant to G.S. 105-312.

If you did not receive the exclusion last year, but are now eligible, you may obtain an application from the county tax department. It must be filed with the county assessor by **June 1**.

General Statute 105-277.1B Property Tax Homestead Circuit Breaker Deferment:

North Carolina defers a portion of the property taxes on the appraised value of a permanent residence owned and occupied by a North Carolina resident who has owned and occupied the property at least five years, is at least 65 years of age or is totally and permanently disabled, and whose income does not exceed (assessor insert amount). If the owner's income is (assessor insert amount) or less, then the portion of property taxes imposed on the residence that exceeds 4% of the owner's income may be deferred. If the owner's income is more than (assessor insert amount) but less than or equal to (assessor insert amount), then the portion of the property taxes on the residence that exceeds 5% of the owner's income may be deferred.

The deferred taxes become a lien on the residence and the most recent three years of deferred taxes preceding a disqualifying event become due with interest upon one of the following disqualifying events: 1) the owner transfers the residence; 2) the owner dies; or 3) the owner ceases to use the property as a permanent residence. Multiple owners of a permanent residence must all qualify for the circuit breaker before a deferment of taxes will be allowed.

You must apply for the opportunity to defer property taxes each and every year that you wish to defer taxes. The application may be obtained from the county tax department and it must be filed with the county assessor by **June 1**.

Note: An owner who qualifies for both the property tax homestead exclusion and the property tax homestead circuit breaker may elect to take only one of these forms of property tax relief.

County Address and Phone Number

Application Must Be Received by June 1st To Be Timely Filed.

STATE OF NORTH CAROLINA

COUNTY OF__________________________ **YEAR 2009**

APPLICATION FOR PROPERTY TAX RELIEF

ELDERLY OR DISABLED EXCLUSION (G.S. 105-277.1),

DISABLED VETERAN EXCLUSION (G.S. 105-277.1C), or

CIRCUIT BREAKER TAX DEFERMENT PROGRAM (G.S. 105-277.1B)

Property ID Number: ____

Name of Applicant: ____ **D.o.B:** _______**M**_____**D**_______**Y**
Last First MI

Name of Spouse: ____ **D.o.B:** _______**M**_____**D**_______**Y**
Last First MI

Residence Address: ____

____

Telephone Number: **(H)**______________________**(W)**____________________**(C)**______________________

E-mail Address: ____**(optional)**

Circle One:

Yes **No** Is this property your permanent legal residence?

Yes **No** Does your spouse (if applicable) live with you in the residence? If you answer **No**, provide your spouse's address: ____
____

Yes **No** Are you or your spouse currently residing in a health care facility? If you answer **Yes**, circle one (applicant / spouse) and indicate current length of stay: ____________________________

Yes **No** Do you and your spouse (if applicable) own 100% interest in the property? If you answer **No**, list all owners and their ownership percentage:

Owner__________________________ ______% Owner__________________________ ______%
Owner__________________________ ______% Owner__________________________ ______%
Owner__________________________ ______% Owner__________________________ ______%

Note: Separate applications are required for each owner that is claiming property tax relief. If a husband and wife own the property as tenants by the entirety, only one application is required. If a husband and wife own the property as tenants in common, then a separate application is required for each spouse.

Part 1. Selecting the Program

Each owner may receive benefit from only one of the three property tax relief programs, even though you may meet the requirements for more than one program.

However, it is possible that the tax rates or tax values may not be established until some time after the filing of this application. This can make it difficult for you to determine which program you prefer. The following procedures will help to resolve this situation.

Applying for One Program

If you know that you only wish to apply for one program, check only that program in the section below. The assessor will review your application and send you a notice of decision. The notice of decision will also explain the procedures to appeal if you do not agree with the decision of the assessor.

Applying for More Than One Program

Each owner is eligible to receive benefit from only one program. However, if you think you meet the requirements for more than one program but, as a result of the uncertainty of tax rates or values at the time of application, you are unable to make a decision on which **one program** you wish to choose, check all of the programs in the section below for which you wish to receive consideration. When the tax rates and values are determined, the assessor will review your application and will send you a letter notifying you of your options. If the letter indicates that you do not qualify or if you disagree with any decision in the letter, you may appeal. **You must respond to the option letter within the specified time period or it will be assumed that you do not wish to participate in any of the property tax relief programs.** In that case, you will be so notified and you will have the chance to appeal.

Please read the descriptions and requirements of the three programs on the following pages and then check the program(s) for which you are applying:

Check:	You Must Complete:
[ ] **Elderly or Disabled Exclusion**	**Parts 2, 5, 6**
[ ] **Disabled Veteran Exclusion**	**Parts 3, 6**
[ ] **Circuit Breaker Tax Deferment Program**	**Parts 4, 5, 6**

If you check more than one program, please read ALL of the information on this page!

Part 2. Elderly or Disabled Exclusion

Short Description: This program excludes the greater of the first $25,000 or 50% of the appraised value of the permanent residence of a qualifying owner. A qualifying owner must either be at least 65 years of age or be totally and permanently disabled. The owner cannot have an income amount for the previous year that exceeds the income eligibility limit for the current year, which for the 2009 tax year is **$25,600**. See G.S. 105-277.1 for the full text of the statute.

Multiple Owners: Benefit limitations may apply when there are multiple owners. Each owner must file a separate application (other than husband and wife as tenants by the entirety). If eligible, each owner may receive benefits under the Elderly or Disabled Exclusion or the Disabled Veteran Exclusion. The Circuit Breaker Property Tax Deferment cannot be combined with either of these two programs.

Circle One:

Yes **No** As of January 1, were you at least 65 years of age? If you answer **Yes**, you do not have to file Form AV-9A Certification of Disability.

Yes **No** As of January 1, were you totally and permanently disabled and less than 65 years of age? If you answer **Yes**, you must file Form AV-9A Certification of Disability.

Requirements:

1. File Form AV-9A Certification of Disability if you are not at least 65 years of age.
2. Complete Part 5. Income Information.
3. Complete Part 6. Affirmation and Signature.

Office Use Only: AV-9A Required: Y / N Approved: Y / N Date: ________ By: ________
AV-9A Received: Y / N Date: ________ Comments: ________

Part 3. Disabled Veteran Exclusion

Short Description: This program excludes up to the first $45,000 of the appraised value of the permanent residence of an honorably discharged veteran who has a total and permanent disability that is service-connected **or** who receives benefits for specially adapted housing under 38 U.S.C. 2101. There is no age or income limitation for this program. This benefit is also available to the unmarried surviving spouse of an honorably discharged disabled veteran. See G.S. 105-277.1C for the full text of the statute.

Multiple Owners: Benefit limitations may apply when there are multiple owners. Each owner must file a separate application (other than husband and wife as tenants by the entirety). If eligible, each owner may receive benefits under the Disabled Veteran Exclusion or the Elderly or Disabled Exclusion. The Circuit Breaker Property Tax Deferment cannot be combined with either of these two programs.

Circle One: **Yes** **No** Are you an honorably discharged veteran of a branch of the U.S. Armed Forces? Name of branch: ______________________________

Yes **No** Are you the unmarried surviving spouse of an honorably discharged disabled veteran? If you answer **Yes**, complete this section and provide the documentation based on your spouse's status on the date of death.

Either answer this: **Yes** **No** Do you have a veteran's disability certification from the Veterans Administration or another federal agency that certifies that you have a total and permanent disability that is service-connected? **YOU MUST PROVIDE A COPY TO THE TAX ASSESSOR TO RECEIVE BENEFIT.**

Or this: **Yes** **No** Do you have documentation that you receive benefits for specially adapted housing under 38 U.S.C. 2101? **YOU MUST PROVIDE A COPY TO THE TAX ASSESSOR TO RECEIVE BENEFIT.**

Requirements:

1. File a veteran's disability certification if you are claiming a total and permanent service-connected disability. Obtain the certification from the appropriate federal agency, **or**

1. File documentation that you receive benefits for specially adapted housing under 38 U.S.C. 2101. Obtain the documentation from the appropriate federal agency.

2. File a copy of your Honorable Discharge Certificate.

3. Complete Part 6. Affirmation and Signature.

Office Use Only: VDC Received: Y / N Date: ____________ Approved: Y / N Date: __________ By: ______________
SAH Received: Y / N Date: ____________ Comments: ______________________________
HDC Received: Y / N Date: ____________

Part 4. Circuit Breaker Property Tax Deferment

Short Description: Under this program, taxes for each year are limited to a percentage of the qualifying owner's income. A qualifying owner must either be at least 65 years of age or be totally and permanently disabled. For an owner whose income amount for the previous year does not exceed the income eligibility limit for the current year, which for the 2009 tax year is **$25,600**, the owner's taxes will be limited to four percent (4%) of the owner's income. For an owner whose income exceeds the income eligibility limit (**$25,600**) but does not exceed 150% of the income eligibility limit, which for the 2009 tax year is **$38,400**, the owner's taxes will be limited to five percent (5%) of the owner's income.

However, the taxes over the limitation amount are deferred and remain a lien on the property. The last three years of deferred taxes prior to a disqualifying event will become due and payable, with interest, on the date of the disqualifying event. Interest accrues on the deferred taxes as if they had been payable on the dates on which they would have originally become due. Disqualifying events are death of the owner, transfer of the property, and failure to use the property as the owner's permanent residence. Exceptions and special provisions apply. See G.S. 105-277.1B for the full text of the statute.

YOU MUST FILE A NEW APPLICATION FOR THIS PROGRAM EVERY YEAR!

Multiple Owners: Each owner (other than husband and wife as tenants by the entirety) must file a separate application. **All owners must qualify and elect to defer taxes under this program or no benefit is allowed under this program.** The Circuit Breaker Property Tax Deferment cannot be combined with either the Elderly or Disabled Exclusion or the Disabled Veteran Exclusion.

Check One:

Yes **No** As of January 1, were you at least 65 years of age? If you answer **Yes**, you do not have to file Form AV-9A Certification of Disability.

Yes **No** As of January 1, were you totally and permanently disabled and less than 65 years of age? If you answer **Yes**, you must file Form AV-9A Certification of Disability.

Yes **No** Have you owned and occupied your permanent residence for at least the last five full years prior to January 1 of this year?

Yes **No** Do all owners of this property qualify for this program and elect to defer taxes under this program? If you answer **No**, the property cannot receive benefit under this program.

Requirements:

1. File Form AV-9A Certification of Disability if you are not at least 65 years of age.
2. Complete Part 5. Income Information.
3. Complete Part 6. Affirmation and Signature.

Office Use Only: AV-9A Required: Y / N Approved: Y – 4% / Y – 5% / N Date: ________ By: ____________
AV-9A Received: Y / N Date: _______ Comments: ______________________________

<u>Part 5. Income Information</u> (complete only if you also completed Part 2 or Part 4)

Social Security Number (SSN) disclosure is mandatory for approval of the Elderly or Disabled Exclusion and the Circuit Breaker Property Tax Deferment Program and will be used to establish the identification of the applicant. The SSN may be used for verification of information provided on this application. The authority to require this number is given by 42 U.S.C. Section 405(c)(2)(C)(i). The SSN and all income tax information will be kept confidential. The SSN may also be used to facilitate collection of property taxes if you do not timely and voluntarily pay the taxes. Using the SSN will allow the tax collector to claim payment of an unpaid property tax bill from any State income tax refund that might otherwise be owed to you. Your SSN may be shared with the State for this purpose. In addition, your SSN may be used to garnish wages or attach bank accounts for failure to timely pay taxes.

Social Security Number: ________-______-_________ (**Applicant**) ________-______-_________ (**Spouse**)

<u>Requirements</u>:

1. You must provide a copy of the first page of your individual Federal Income Tax Return for the previous calendar year (unless you do not file a Federal Income Tax Return). Married applicants filing separate returns should submit both returns. If you have not filed your Federal Income Tax Return at the time you submit this application, submit a copy of the first page when you file your return. Your income tax returns are confidential and will be treated as such. **<u>Your application will not be processed until the income tax information is received</u>**. Please check the appropriate box concerning the submission of your Federal Income Tax Return.

[ ] Federal Income Tax Return submitted with this application.

[ ] Federal Income Tax Return will be submitted when filed with the IRS.

[ ] I will not file a Federal Income Tax Return with the IRS for the previous calendar year.

(Part 5 continued on the next page.)

Part 5. Income Information (continued from previous page)

2. Provide the income information requested below for the previous calendar year. Provide the total amount for both spouses. **If you do not file a Federal Income Tax Return, you must attach documentation of the income that you report below (W-2, SSA-1099, 1099-R, 1099-INT, 1099-DIV, financial institution statements, etc.).**

a. Wages, Salaries, Tips, etc………………………………………………… $__________________

b. Interest (Taxable and Tax Exempt)………………………………………... $__________________

c. Dividends……………………………………………………………………... $__________________

d. Capital Gains………………………………………………………………… $__________________

e. IRA Distributions…………………………………………………………... $__________________

f. Pensions and Annuities……………………………………………………... $__________________

g. Disability Payments (not included in Pensions and Annuities)……………. $__________________

h. Social Security Benefits (Taxable and Tax Exempt)……………………….. $__________________

i. All other moneys received (examples: alimony, rents, gifts, income from Sched. C, E, F)... $__________________

Total…………………………………………………………………………… $__________________

Comments: ____

____

INFORMATION IS SUBJECT TO VERIFICATION WITH THE NORTH CAROLINA DEPARTMENT OF REVENUE.

Office Use Only: FITR Required: Y / N FITR Received: Y / N Date: _________

Income: $____________ < IEL / 1.5 IEL / > 1.5 IEL Date: _________ By: __________________

Comments: ____

Part 6. Affirmation and Signature

AFFIRMATION OF APPLICANT – Under penalties prescribed by law, I hereby affirm that, to the best of my knowledge and belief, all information furnished by me in connection with this application is true and complete. **Furthermore, I understand that if I participate in the Circuit Breaker Property Tax Deferment Program, liens for the deferred taxes will exist on my property. The last three years of deferred taxes prior to a disqualifying event will become due and payable, with interest, on the date of the disqualifying event.**

Applicant's Name (please print)	Applicant's Signature	Date
Spouse's Name (please print)	Spouse's Signature	Date

Application must be received by June 1st to be timely filed.

This application must be filed with the County Tax Assessor. **Do not send this application to the North Carolina Department of Revenue**. (County Tax Assessor addresses and phone numbers can be found online at: www.dornc.com/downloads/CountyList.pdf)