

## Chapter 3

**Taxation**

## Article I Exemption for Senior and Disabled Citizens

- Section 3-1 Definitions
- Section 3-2 Qualification and Amount of Exemption
- Section 3-3 Application for Exemption: Form and Filing Date
- Section 3-4 Contents of Application for Exemption
- Section 3-5 Allowance of Exemption
- Section 3-6 New Application Shall be Filed Each Year
- Section 3-7 Exemption When Property is Held by Tenants in Common/Joint Tenants
- Section 3-8 Mayor and Council May Promulgate Rules and Regulations
- Section 3-9 Oaths
- Section 3-10 Charges for Preparation of Form Prohibited
- Section 3-11 Discounts for Water Service and Building Permit Charges and Fees
- Sections 3-12 to 3-15 Reserved

## Article II Transfer of Real Property or Interest Therein

- Section 3-16 Definitions
- Section 3-17 Taxable Conduct
- Section 3-18 Payment of Tax
- Section 3-19 Additional Functions of the Tax Collector
- Section 3-20 Recordation
- Section 3-21 Dispute between Parties
- Section 3-22 Prohibited Conduct
- Section 3-23 Penalties
- Sections 3-24 to 3-30 Reserved
- Sections 3-31 Unpaid Fees and Charges Shall Constitute a Lien

History: Article I was Ordinance 13001<sup>1</sup> (adopted October 11, 1971) and Article II was Ordinance 13002<sup>2</sup> (adopted October 11, 1971).

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<sup>1</sup> As amended by Ordinance 13001A (adopted January 8, 1973), Ordinance 13001C (adopted June 10, 1985), Ordinance 13001D (adopted March 20, 1987), Ordinance 13001E (adopted March 12, 1990), Ordinance 13001F (adopted October 28, 1992), and Ordinance 13001G (adopted August 3, 1998).

<sup>2</sup> As amended by Ordinance 13002A (adopted December 9, 1985), Ordinance 13002B (adopted October 12, 1987), Ordinance 13002C (adopted December 10, 1990) and Ordinance 13002D (adopted August 13, 1998), Ordinance 14-0915-02 Omnibus Zoning Ordinance (adopted March 4, 2015).

## **Article I Senior and Disabled Citizen Exemption**

### **Section 3-1 Definitions**

a.) Disability: inability to work because of physical or mental impairment that has lasted or may last at least twelve (12) months.

b.) Dwelling house: structure in legal use only as a single family residence

c.) Household: any number of individuals over the age of eighteen (18), none of whom are claimed as a dependent on the federal income tax return or any individual residing in the dwelling house.

d.) Income: all income from whatever source derived, including, but not limited to realized capital gains and, in their entirety, pension annuity and retirement benefits. Social security and disability pension benefits shall not, however, be included as "income." For any tax year for which an exemption is claimed, "income" shall be determined to be equal in amount to the income received during the calendar year ended immediately preceding December 31 of the pre-tax year.

e.) Pre-tax year: the calendar year immediately preceding the "tax year."

f.) Resident: one legally residing within the City for a period of one (1) year immediately preceding December 31 of the "tax year." Mere seasonal or temporary residence within the City, of whatever duration, shall not constitute residence within the City for the purposes of this Article. Absence from the City for a period of twelve (12) months shall be prima facie evidence of abandonment of residence in the City. The burden of establishing legal residence within the City shall be upon the claimant.

g.) Tax year: the calendar year in which the City real estate tax is due and payable.

### **Section 3-2 Qualifications and Amount of Exemption**

Every resident of this City, of the age of sixty-five (65) or more years, having an income not in excess of twenty thousand dollars (\$20,000.00) per year and residing in a dwelling house owned by him which is a constituent part of his real property, shall be entitled, on proper claim being made therefore, to exemption from taxation on such real property to an assessed valuation not exceeding forty thousand dollars (\$40,000.00) in the aggregate. No such exemption shall be in addition to any other exemption to which said person may be entitled, and no such exemption shall be permitted where the total household income of those residing in said dwelling house is in excess of twenty-five thousand dollars (\$25,000.00) per year.

Every resident of this City who has become disabled by December 31 of the pre-tax year, having an income not in excess of twenty thousand dollars (\$20,000.00) per year and residing in a dwelling house owned by him which is a constituent part of his real property, shall be entitled, on proper claim being made therefore, to exemption from taxation on such real property to an assessed valuation not exceeding forty thousand dollars (\$40,000.00). For loss of use of limbs or loss of limbs requiring home with special fixtures, an additional forty thousand dollars (\$40,000.00) exemption up to eighty thousand dollars (\$80,000.00). No such exemption shall be in addition to any other exemption to which said person may be entitled, and no such exemption shall be permitted where the total household income of those residing in said dwelling house is in excess of twenty-five thousand dollars (\$25,000.00) per year.

### **Section 3-3 Application for Exemption: Form and Filing Date**

No exemption from taxation on the evaluation of real property as provided in this Article shall be allowed except upon written application therefore, which shall be on a form prescribed and provided by the Mayor and Council. Applications for exemption shall be filed with the Mayor and Council on or before April 15 of the tax year.

Resident must submit with application as proof of disability:

- a.) Certificate of Social Security insurance award of fifty percent (50%) disability or greater or
- b.) Signature of two (2) doctors on application describing extent of disability of at least fifty percent (50%).

### **Section 3-4 Contents of Application for Exemption**

Every fact essential to support a claim for exemption under this Article shall exist on December 31 of the pre-tax year. Every application by a claimant therefore shall establish that:

- a.) he was, on December 31 of the pre-tax year:
  - 1.) a resident of this City for the period required.
  - 2.) of the age of sixty-five (65) or more years.
  - 3.) the owner of a dwelling house which is a constituent part of the real property for which the exemption is claimed.
  - 4.) residing in said dwelling house.
- b.) his income for the yearly period as provided by this Article did not exceed twenty thousand dollars (\$20,000.00).

c.) the total yearly household income of those persons residing in said dwelling house is not in excess of twenty-five thousand dollars (\$25,000.00).

#### **Section 3-5 Allowance of Exemption**

If the Mayor and Council approve the application, the claimant shall be allowed 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 Mayor and Council.

#### **Section 3-6 New Application Shall be Filed Each Year**

Claimants shall reestablish their qualifications as outlined in this Article each year.

#### **Section 3-7 Exemption When Property is Held by Tenants in Common/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 his interest in said property in excess of the assessed valuation of his proportionate share in said property. Claimant's proportionate share, for the purposes of this Article, 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 Article shall preclude more than one (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 one (1) full exemption in regard to such property shall be allowed in any year. In any case in which the claimants cannot agree as to the apportionment thereof, the exemption shall be apportioned 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 one exemption in regard to such property shall be allowed in any year.

c.) Right to claim exemption under this Article 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 Article, but not to property the title to which is held by a corporation.

**Section 3-8 Mayor and Council May Promulgate Rules and Regulations**

The Mayor and Council may promulgate such rules and regulations and prescribe such forms as they shall deem necessary to implement this Article. They may, in their discretion, eliminate the necessity for sworn applications.

**Section 3-9 Oaths**

The Mayor may take and administer the oath, where required, on any claim for exemption under this Article.

**Section 3-10 Charges for Preparation of Form Prohibited**

No charge shall be made for the taking of any affidavit or the preparation of any form required by this Article.

**Section 3-11 Discounts for Water Service and Building Permit Charges and Fees**

All residents of the City of Delaware City, who qualify under Section 3-2 of this Article, and who have been granted the exemption provided for by Section 3-5 of this Article, shall be entitled to a forty percent (40%) discount for all City of Delaware City water service charges, fees, installation expenses and charges and building permit fees and charges. Provided, however, that this discount shall not apply to any penalties or interest assessed for late payment or non-payment and any charges incurred in connection with collection or enforcement of late, delinquent or unpaid water service fees or charges, nor to any shut-off fees and/or reconnection fees related to enforcement actions for non-payment.

**Sections 3-12 to 3-15 Reserved**

<sup>1</sup>Article I Chapter 3 Sections 3-1, 3-2, and 3-4 amended by Ordinance 05-0620-01 (adopted Aug. 15, 2005)

## Article II Transfer of Real Property or Interest Therein

### Section 3-16 Definitions

a.) Transfer: The making, executing, delivering, accepting, or presenting for recording of any document whereby title to or any interest in real property located within the corporate limits of Delaware City is transferred or conveyed, regardless of where the document is executed, delivered or accepted.

b.) Document: Any deed, instrument or writing whereby any lands, tenements, or hereditaments, or any interest therein, situate within the corporate limits of Delaware City, shall be granted, bargained, sold, or otherwise conveyed to the grantee, purchaser, or any other person, which shall be presented for recording in New Castle County, not including, however, (a) wills, (b) mortgages, (c) transfers between nonprofit industrial development agencies and industrial corporations purchasing from them, (d) any transfers to non-profit industrial development agencies, (e) leases, (f) transfers between husband and wife, (g) transfers between persons who were previously husband and wife but who have since been divorced provided such transfer is made within three (3) months of the date of the granting of the final decree in divorce, and the property or interest therein subject to such transfer was acquired by the husband and wife or husband or wife prior to the granting of the final decree in divorce, (h) transfers between parent and child, or the spouse of such child, (i) transfers between parent and trustee for the benefit of a child or the spouse of such child, (j) correctional deeds without consideration, (k) a conveyance to a trustee under a recorded trust agreement for the express purpose of holding title in trust as security for a debt contracted at the time of the conveyance under which the trustee is not the lender and requiring the trustee to make reconveyance to the grantor-borrower upon the repayment of the debt, (l) any transfer from a purchase money mortgagor to the vendor holding the purchase money mortgage whether pursuant to a foreclosure or in lieu thereof, (m) transfers by any organization exempted from ad valorem real estate taxes, (n) any conveyance to or from a corporation, or a partnership, where the grantor or grantee owns stock in the corporation, or an interest in the partnership in the same proportion as his interest in, or owner of, the real estate being conveyed; provided, however, that this paragraph shall not apply to any distribution in liquidation or other conveyance resulting from the partial or complete liquidation of a corporation, unless the stock of the corporation being liquidated has been held by the grantor or grantee for more than three (3) years; provided, further, that this paragraph shall not apply to any conveyance from a partnership to its partners unless the partners' interest in the partnership has been held for more than three (3) years, and (o) transfers by or to the Mayor and Council of

Delaware City, State, or Federal Governments or instrumentalities, agencies or political subdivisions thereof. There shall be included in the definition of “document” for purposes of this Article any contract or other agreement or undertaking for the construction of all or a part of any building all or a portion of which contract, agreement, or undertaking (or any amendment to the foregoing) is entered into, or labor or materials are supplied, either prior to the date of the transfer of the land on which the buildings to be constructed or within one year from the date of the transfer of the land on which the buildings to be constructed or within one (1) year from the date of the transfer to the grantee. The City shall not issue a building permit for any such building unless and until the person or persons (including corporation or other associations) requesting such permit shall demonstrate in whatever form may be specified by the City Manager, including at his/her discretion, a form of affidavit, that: (a) No transfer as described in this Section has occurred within the preceding year; (b) no portion of the contract for construction for which the permit is being requested was entered into and no materials or labor with respect to the building has been provided within one (1) year of the date on which the property was transferred; or (c) there has been paid a realty transfer tax on the document as defined in this Subsection. In addition, the City shall not issue a certificate of occupancy relative to any building on which a tax is provided by this section unless and until the owner recertifies the actual cost of the building and pays any additional tax due as a result of such recertification. A “building” for purposes of this Subsection shall mean any structure having a roof supported by columns or walls which structure is intended for supporting or sheltering any use or occupancy but shall not include any alteration of or addition to an existing building where the cost of said alteration or addition is less than fifty percent (50%) of the value of the property transferred. A “transfer” for purposes of this Section shall include any transfer made by a “document” as described in this Section, other than this Subsection, and shall not include any transaction excluded from the definition of “document” under the provisions of this Article.

c.) Tax Collector: The Tax Collector of Delaware City or any duly authorized Deputy Tax Collector of Delaware City.

d.) Value: In the case of any document granting, bargaining, selling, or otherwise conveying any land, tenement, or hereditaments, or interest therein, the amount of the actual consideration therefore, including liens or other encumbrances thereon and ground rent, or a commensurate part of the liens, or other encumbrances thereon and ground rent, where such liens or other encumbrances and ground rent also encumber other lands, tenements, or hereditaments. Where such document shall not set forth the real or bona fide consideration therefor the “value”

thereof shall be determined from the price set forth in or actual consideration for the contract of sale, or in the case of a gift, or any other document without consideration, from the actual monetary worth of the property granted, bargained, sold, or otherwise conveyed, which in either event shall not be less than the amount of the estimated full value of such lands, tenements or hereditaments for local tax purposes as determined by the Assessor of Delaware City.

### **Section 3-17 Taxable Conduct**

a.) Every person who makes, executes, issues or delivers any document, or in whose behalf any document is made, executed, issued or delivered, shall pay thereof and in respect thereof, or for and in respect of the vellum, parchment, or paper upon which such document is written or printed, a tax at the rate of one and one half percent (1½%) of the value of the property represented by such document, which tax shall be payable at the time of the making, execution, issuance, or delivery of such document.

b.) Where a person acquires title to any lands, tenements, or hereditaments as nominee or as a straw party for the real grantee or purchaser, the transfer of such title by such nominee or straw party to the real grantee or purchaser shall be exempt from this tax.

c.) Where a person acquires title to any lands, tenements, or hereditaments for the purpose of holding same as a nominee or as a straw party for the grantor, such transfer of title to the nominee or straw party shall be exempt from this tax.

#### **d.) Taxable Transfers**

1.) Except as provided in paragraphs 2 and 3 of this subsection, where beneficial ownership in real estate is transferred through a conveyance or series of conveyances of intangible interest in a corporation, partnership or trust, such conveyance shall be taxable under this chapter as if such property were conveyed through a duly recorded “document” as defined in Section 3-16 of this Article, and subject to the exemptions contained therein except those exemptions contained therein except those exemptions which may conflict with this Subsection.

2.) No bona fide pledge of stock or partnership interests as loan collateral nor any transfer of publicly traded stock or publicly traded partnership interest shall be deemed subject to taxation under this Subsection.

3.) Where the beneficial owners of real property prior to the conveyance or series of conveyances as referred to in this Subsection own eighty percent (80%) of or more of the beneficial interest in the real estate following said conveyances, such transfer shall not be subject to tax under this Subsection. Where the beneficial owners of real property



prior to the conveyance or series of conveyances referred to in this Subsection own less than eighty percent (80%) of the beneficial interest in the real estate following said conveyance or conveyances, such transfers shall not be subject to tax under this Subsection, unless, under regulations promulgated by the Secretary of Finance for the State of Delaware, such transfer or transfers are properly characterized as a sale of real property. Such characterization shall take into account the timing of the transaction, beneficial ownership prior to and subsequent to the conveyance or conveyances; the business purpose of the corporation, partnership or trust; and such other factors as may be relevant.

4.) Notwithstanding subsection 1 of this Section, the rate of tax on documents described in the second paragraph of Section 3-16, subparagraph b Document, shall be one percent (1%) on amounts exceeding ten thousand dollars (\$10,000.00), which shall be borne by the owner of the building whose construction is made subject to tax under this Article.

### **Section 3-18 Payment of Tax**

a.) The payment of the tax imposed by this Article shall be evidenced by the affixing of a documentary stamp to every document by the Tax Collector.

b.) Sheriff's Sale. The tax herein imposed shall be fully paid, and have priority out of the proceeds of any judicial sale of real estate before any other obligation, claim, lien, judgment, estate or costs of the sale, and of the writ upon which the sale is made, and the sheriff, or other officer, conducting the sale, shall pay the tax herein imposed out of the first moneys paid to him in connection therewith, unless previously paid by any party; provided, however, any tax imposed by the State of Delaware shall have priority over the tax imposed under this Article.

The value of the property for determining the tax shall be the highest of the following:

- 1.) The bid price;
- 2.) The amount of the mortgage not in excess of the fair value of the real estate;
- 3.) The estimated full value.

### **Section 3-19 Additional Functions of the Tax Collector**

In addition to the Tax Collector's other duties:

a.) The Tax Collector shall make provisions for the sale of stamps in such places as he or she may deem necessary.

b.) The Tax Collector may by regulation provide for the evidence of the payment of the tax to be shown on the document by means other than the affixing of documentary stamps.

c.) The Tax Collector is charged with the enforcement of this Article and is authorized and empowered to prescribe, adopt, promulgate, and enforce regulations relating to:

- 1.) The method to be used in affixing or canceling of stamps in substitution for, or in addition to, the method and means provided in this Article;
- 2.) The denominations and sale of stamps;
- 3.) Any other matter or thing pertaining to the administration and enforcement of this Article.

### **Section 3-20 Recordation**

a.) No document shall be recorded in the Office of the Recorder of Deeds unless a documentary stamp or stamps shall have been affixed thereto as provided in this Article.

b.) The affixation of stamps to a document upon which a tax is imposed by this Article when lodged with or presented to the Recorder of Deeds, shall be an affirmation on the part of the transferor or transferors that the true, full and complete value of the transaction is fully reflected in the amount of the stamps affixed thereto.

c.) Every document when lodged with or presented to the Recorder of Deeds, shall set forth therein and as a part of such document the true, full and complete value thereof, or shall be accompanied by an affidavit executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this Article.

### **Section 3-21 Dispute between Parties**

As between the parties to any transaction which is subject to the retail transfer tax imposed by this Article, in the absence of an agreement to the contrary, the burden for paying the tax shall be on the grantor.

### **Section 3-22 Prohibited Conduct**

a.) No person shall:

- 1.) Make, execute, issue, deliver, or accept, or cause to be made, executed, issued, delivered, or accepted any document without the full amount of tax thereon being duly paid, or

2.) Make use of any documentary stamps or denote payment of any tax imposed by this Article unless the tax has been duly paid to the Tax Collector;

3.) Fail, neglect, or refuse to comply with, or otherwise violate, the regulations prescribed, adopted, and promulgated by the Tax Collector under the provisions of this Article; or

4.) Fraudulently cut, tear, or remove from a document any documentary stamp; or

5.) Fraudulently affix to any document upon which a tax is imposed by this Article any documentary stamp which has been cut, torn, or removed from any other document upon which a tax is imposed by this Article or any documentary stamp of insufficient value, or any forged or counterfeited stamp, or any impression of any forged or counterfeited stamp, die, plate, or other article; or

6.) Willfully remove or alter the cancellation marks of any documentary stamp, or restore any such documentary stamp with intent to use or to cause the same to be used after it has already been used, or knowingly buy, sell, offer for sale, or give away any such altered or restored stamp to any person for use, or knowingly use the same; or

7.) Knowingly have in his possession any altered or restored documentary stamp which has been removed from any document upon which tax is imposed by this Article, and the possession of such stamp shall be prima facie evidence of an intent to violate this cause; or

8.) Knowingly or willfully prepare, keep, sell, offer for sale or have in his possession any forged or counterfeited documentary stamps.

9.) Accept for recording in the Office of any Recorder of Deeds any document upon which the realty transfer tax is imposed without the proper documentary stamp or other evidence of payment of the tax affixed thereto as required by this Article as is indicated in such document or accompanying affidavit.

### **Section 3-23 Penalties**

a.) Any person guilty of conduct prohibited in Section 7 of this Article shall be guilty of a misdemeanor, and upon conviction any person violating the provisions of Section 3-22 of this Article shall be punished with a fine of not more than five hundred dollars (\$500.00) or by imprisonment not to exceed six (6) months, or both fine and imprisonment in the discretion of the Court. The Court of Common Pleas for New Castle County shall have concurrent jurisdiction with Justices of the Peace to try offenses under this Article.

Sections 3-24 to 6-30 Reserved

**Section 3-31 Unpaid Fees and Charges Shall Constitute a Lien**

All fees levied by the City of Delaware City, including but not limited to charges imposed for utilities, code violations, delinquent permit and licensing fees, vacant property fees and /or fees or amounts otherwise charged by or due to the City under other provisions of this Code or the City's Charter, shall be deemed to be tax liens against a taxpayer's property or properties pursuant to 25 Del. C. § 2901 and shall be collected in the same manner as other taxes due to the City of Delaware City.<sup>3</sup>

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<sup>3</sup> Ordinance 15-0518-01 Adopted on June 15, 2015 Added Section 3-31.