

Chapter 138

Taxation

[HISTORY: Adopted by the Town of Derry as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Clean energy and environmental initiative — See Ch. 5, Art. VI.

Article III

Derry Commercial/Industrial Property Tax Exemption Program

[Adopted April 01, 2020]

§ 138-31 State law references.

Commercial and Industrial Construction Exemption, RSA 72:80-83; State Economic Growth, Resource Protection and Planning Policy, RSA 9-B; Appraisal of Taxed Property, RSA 75:1; Collection of Taxes, RSA 80:1 through 80:42-a; and Administrative Procedure Act, RSA 541-A.

§ 138-32 Adoption of program.

Pursuant to the authority granted by RSA 72:81, the Town of Derry adopts the Derry Commercial/Industrial Property Tax Exemption Program, for application within the geographical limits of the Town.

§ 138-33 Short title.

Derry Commercial/Industrial Property Tax Exemption Program.

§ 138-34 Enabling statute.

New Hampshire Statutes, RSA Title V, Taxation, Chapter 72, Commercial and Industrial Construction Exemption Program Statewide

§ 138-35 Purpose; declaration of public benefit.

- A. It is declared to be a public benefit to enhance the Town of Derry's commercial/industrial property tax base with respect to economic activity, cultural and historic character, and sense of community, that contribute to economic and social vitality.
- B. It is further declared to be a public benefit to encourage the rehabilitation of any underutilized commercial/industrial structures in our town as a means of encouraging growth of economic, residential, and municipal uses, in accordance with RSA 9-B.
- C. Short-term property assessment tax relief and a related covenant to protect the public benefit as provided under this article are considered to provide a demonstrated public benefit if it encourages new construction, substantial rehabilitation and use of qualifying structures, or the replacement of a qualifying structure.

§ 138-36 Tax relief authority.

- A. The Town of Derry hereby adopts RSA 72:80-83 in the manner specified under RSA 72:82. In addition, the Town may modify the incentive program to best suit the needs of the Town and its constituents.

- B. The governing body shall herein refer to the Derry Town Council. (The Council may designate an agent as permitted per Town Charter.)

§ 138-37 Definitions.

In the interpretation and enforcement of this article, all words other than those defined specifically below shall have the meanings implied by their context in the article or the ordinarily accepted meanings. For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ASSESSED VALUATION(S)

The assessed valuation of the improvements/structures as of April 1 within the tax year the application is made, pursuant to RSA 72:83.

COMMERCIAL USES -

All retail, wholesale, service, and similar uses such as: automobile and similar vehicle sales; automobile repair facility/garage; automobile service station; bank; brewery; brew pub; commercial performing and fine arts schools and studios; commercial service establishment; conference center; contractor; contractor's yard; funeral establishment; golf course/country club; grocery/convenience store; hospital; hotel; commercial service establishment; inn (motel); medical office; movie and recording studio; multi-unit commercial establishment; nursery; office, pharmacy, printing; professional office; radio broadcasting facility; repairman; restaurant, drive in restaurant; retail sales establishment; riding school; television broadcasting; transportation center; travel agent; tourist home, and wholesale business.

COVENANT

A formal and legally binding agreement or contract such as a lease, or one of the clauses in an agreement of this kind.

INDUSTRIAL USES

Industrial uses" shall include all manufacturing, production, assembling, warehousing, or processing of goods or materials for sale or distribution, research and development activities, or processing of waste materials," such as: bottling facility; building material storage yard; crematorium; equipment upfit (repair); industrial establishment; light industrial establishment; industrial repair garage; industrial supply; laboratory (medical/dental); laboratory - research, experimental, testing; light industry; light manufacturing; microbrewery; product assembly; publishing; research and development facility; research lab; sand/gravel pit; self-storage; truck terminal; warehouse, and wood/metal craft.

QUALIFYING STRUCTURE

A structure located in the Town of Derry built, rebuilt, modernized, or enlarged to be used for commercial or industrial uses as defined in RSA 72:80.

REPLACEMENT

The demolition or removal of a qualifying structure and the subsequent construction of a new structure on the same lot.

TAX INCREMENT FINANCE DISTRICT (TIF)

Any district established in accordance with the provisions of RSA 162-K. (The Town of Derry, through action of the Derry Town Council, adopted the provisions of RSA 162-K on May 7, 2002.)

TAX RELIEF

- A. For a qualifying structure, that for a period of time determined by the Town Council in accordance

with this article, the property tax exemption on a qualifying structure shall be granted as a result of the construction, reconstruction, modernization or enlargement.

- B. For a qualifying structure, the percentage amount of the property tax exemption as determined by the Town Council in accordance with this article.

TAX RELIEF PERIOD & EXEMPTION AMOUNT

The finite period of time during which the tax relief will be effective, and the percentage amount of new assessed value to be exempted, as determined by the Town Council body pursuant to RSA 72:81.

§ 138-38 Public benefits.

In order to qualify for tax relief under this article, the proposed new construction or rehabilitation must provide one or more of the following public benefits, and the proposed replacement must provide one or more of the same public benefits to a greater degree than would a rehabilitation of the same qualifying structure, as follows:

- A. It enhances the economic vitality of the Town; or
- B. It promotes development of municipal centers, providing for efficiency, safety, and a greater sense of community, consistent with RSA 9-B; or
- C. The proposed development is consistent with the vision espoused in the Master Plan; or
- D. It increases commercial/industrial activity in the Town, including job creation.

§ 138-39 Covenant to protect public benefit.

- A. Tax relief for the construction, rehabilitation or replacement of a qualifying structure shall only be effective after a property owner grants to the municipality a covenant ensuring that the structure(s) shall be maintained and used in a manner that furthers the public benefit for which the tax relief was granted and as otherwise provided in this article.
- B. This covenant shall be coextensive with the tax relief period. The covenant may, if required by the Town Council, be effective for a period of time up to twice the duration of the tax relief period.
- C. The covenant shall include provisions requiring the property owner to obtain casualty insurance, and flood insurance if appropriate. The covenant may include, at the governing body's sole discretion, a lien against proceeds from casualty and flood insurance claims for the purpose of ensuring proper restoration or demolition of damaged structures and property. If the property owner has not begun the process of restoration, rebuilding, or demolition of such structure within one year following damage or destruction, the property owner shall be subject to the termination of provisions by the Town Council in a manner similar to approval of the property tax exemption.
- D. The Town shall provide for the recording of the covenant to protect public benefit with the registry of deeds. It shall be a burden upon the property and shall bind all transferees and assignees of such property.

§ 138-40 Application procedure.

- A. An owner (or agent) of a qualifying structure that is located in the Town, who intends to construct, rehabilitate or replace such structure, may, apply to the Planning Department for this tax relief prior to construction, but not after December 31 before the beginning of the tax year for which the exemption is sought. In such cases the Town Council may anticipatorily grant the exemption, subject to adjustment when the actual increase in assessed value becomes known. The applicant shall include the address of the property, a full description of the intended construction,

rehabilitation or replacement, any changes in use of the property resulting from the rehabilitation or replacement, and an application fee. The application shall be on a pre-approved application form provided by the Town Planning Department.

- B. The application for property tax exemption shall not be deemed to be complete and the governing body shall not schedule the public hearing on the application as required under RSA 72:83, until all required information has been submitted.

§ 138-41 Application fees.

- A. An application fee of \$150, or the amount subsequently adopted by the Town Council, shall be paid at the time of application submission to the Planning Department, made out to the "Town of Derry."
- B. The applicant shall also be responsible for the reasonable expenses incurred by the municipality in the drafting, review, and/or execution of the covenant. If the application is approved, the applicant shall be responsible for the cost of recording the covenant.

§ 138-42 Review and decision by Town officials.

- A. Upon receipt of an application, the Council shall hold a duly noticed public hearing and notify the applicant of its decision no later than February 28 before the beginning of the tax year for which the exemption is sought:
 - (1) The structure at issue is a qualifying structure;
 - (2) Whether there is a public benefit to granting the requested property tax exemption;
 - (3) And if so, for what duration.
- B. The Council may seek assistance from Town officials, legal counsel, boards or commissions in making its determinations.
- C. No later than 45 days after the public hearing, the governing body shall render a decision granting or denying the requested tax relief and, if so granting, establish the tax relief period.
- D. After following the procedures established herein, the governing body may grant the tax relief, provided:
 - (1) The governing body finds a public benefit under Section 138-38 of the Town Code; and
 - (2) The specific public benefit is preserved through a covenant under Section 138-39; and
 - (3) The governing body finds that the proposed use is consistent with the municipality's master plan or development regulations; and/or
- E. If the Council grants the tax relief, the Council shall identify the specific public benefit achieved under Section 138-38 of this Town Code and shall determine the precise terms and duration of the covenant to preserve the public benefit under Section 138-39 of this Town Code.
- F. The Town Council or its agents may request such additional or updated information as is necessary to determine eligibility. If they are satisfied that the applicant has willfully made any false statement, or has refused to provide information after such a request, the Town Council may refuse to grant the exemption.
- G. If the Town Council, in its sole discretion, denies the application for tax relief, such denial shall be

accompanied by a written explanation. The governing body's decision may be appealed either to the Board of Tax and Land Appeals or the Superior Court in the same manner as provided for appeals of current use classification pursuant to RSA 72:83; provided, however, that such denial shall be deemed discretionary and shall not be set aside by the Board of Tax and Land Appeals or the Superior Court except for bad faith or discrimination.

§ 138-43 Exemptions.

- A. Tax incremental financing district (TIF): The Town shall have no obligation to grant an application for tax relief for properties located within tax increment finance (TIF) districts when the governing body determines, in its sole discretion, that the granting of tax relief will impede, reduce, or negatively affect:
- (1) The development program or financing plans for such tax increment finance districts; or
 - (2) The ability to satisfy or expedite repayment of debt service obligations incurred for a tax increment financing district; or
 - (3) The ability to satisfy program administration, operating, or maintenance expenses within a tax increment financing district.
- B. RSA 79-E: The Town shall have no obligation to grant an application for a property tax exemption under this program for properties which have applied for and received tax relief under RSA 79-E, Downtown Derry Revitalization Tax Relief Program.

§ 138-44 Other programs.

The provisions of this article shall not apply to properties whose rehabilitation or construction is subsidized by state or federal grants or funds that do not need to be repaid totaling more than 50% of construction costs from state or federal programs.

§ 138-45 Duration and Limitations of Property Tax Exemption Program.

- A. In no instance shall the amount of the property tax exemption exceed 50% of the increase in assessed value attributable to construction of new structures, and additions, renovations, or improvements to existing structures.
- B. In no instance shall the exemption run for a period exceeding 10 years following the new construction.
- C. Pursuant to RSA 72:81, the exemption shall apply only for municipal and local school property taxes assessed by the municipality which shall exclude state education property taxes under RSA 76:3 and county taxes assessed against the municipality under RSA 29:11
- D. If the municipality completes a revaluation during the period for which an exemption has been granted, the amount of the exemption shall be adjusted by the difference in equalization ratios applicable in the municipality before and after the revaluation.
- E. The amount and length of the property tax exemption shall be determined by the Town Council on a per case basis.

§ 138-46 Resumption of full tax liability.

Upon expiration of the tax relief period, the property shall be taxed at its market value in accordance with RSA 75:1 at the date of April 1 of said year.

§ 138-47 Lien for unpaid taxes.

The real estate of every person shall be held for the taxes levied pursuant to RSA 79-E:9.

§ 138-48 Extent of tax relief.

- A. Tax relief granted under this article shall be calculated on the value in excess of the original assessed value. "Original assessed value" shall mean the value of the qualifying structure assessed at the time that the governing body approves the application for tax relief and the owner grants to the municipality the covenant to protect public benefit as required in this article.
- B. Tax relief granted under this article shall pertain only to assessment increases attributable to the construction, rehabilitation or replacement performed under the conditions approved by the governing body and not to those increases attributable to other factors, including but not limited to market forces, such as revaluation and/or periodic assessment updates.

§ 138-49 Notification required.

Once the application is received and deemed complete, the Town will notify the applicant of the date of the public hearing.

§ 138-50 Violations and penalties; enforcement.

- A. Termination of covenant; reduction of tax relief; penalty. If the owner fails to maintain or utilize the building according to the terms of the covenant, or fails to restore, rebuild, or demolish the structure following damage or destruction as provided in Section 138-, the Town Council shall, after a duly noticed public hearing, determine whether and to what extent the public benefit of the rehabilitation or replacement has been diminished and shall determine whether to terminate or reduce the property tax exemption amount and period in accordance with such determination. If the covenant is terminated, the governing body shall assess all past taxes to the owner as though no tax relief was granted, with interest.
- B. Any tax payment required under Subsection A shall be payable according to the following procedure:
 - (1) The Commissioner of the Department of Revenue Administration shall prescribe and issue forms to the local assessing officials for the payment due, which shall provide a description of the property, the market value assessment according to RSA 75:1, and the amount payable.
 - (2) The prescribed form shall be prepared in quadruplicate. The original, duplicate, and triplicate copy of the form shall be given to the collector of taxes for collection of the payment along with a special tax warrant authorizing the collector to collect the payment under the warrant. The quadruplicate copy of the form shall be retained by the local assessing officials for their records.
 - (3) Upon receipt of the special tax warrant and prescribed forms, the tax collector shall mail the (duplicate) copy of the tax bill to the owner responsible for the tax as the notice of payment.
 - (4) Payment shall be due not later than 30 days after the mailing of the bill. Interest at the rate of 18% per annum shall be due thereafter on any amount not paid within the thirty-day period. Interest at 12% per annum shall be charged upon all taxes that would have been due and payable on or before December 1 of each tax year as if no tax relief had been granted.

§ 138-51 Collection of unpaid taxes.

All taxes levied pursuant to RSA 72:81 which are not paid when due shall be collected in the same manner as provided in RSA 80.