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### **TIR 97-12: Personal Income Tax Credit for Failed Cesspool or Septic System Title 5 Expenditures**

#### **I. Introduction**

Any owner ("taxpayer") of a residential property located in Massachusetts who occupies the residential property as his or her principal residence may claim a credit ("Title 5 credit") against personal income tax imposed pursuant to Chapter 62 for certain expenditures associated with the repair or replacement of a failed cesspool or septic system on such property. See G. L. c. 62, § 6(i), added by Section 63 of Chapter 43 of the Acts of 1997 effective for any tax year beginning on or after January 1, 1997. *Id.* at sec. 307. The repair or replacement of the failed cesspool or septic system must be made in accordance with the provisions of 310 CMR 15.000 et seq., the State Environmental Code, Title 5, as promulgated by the Massachusetts Department of Environmental Protection (DEP) in 1995. See 310 CMR 15.002 and 310 CMR 15.004(1), 15.005.

#### **II. Discussion**

General Laws Chapter 62, § 6(i) states,

Any owner of residential property located in the commonwealth who is not a dependent of another taxpayer and who occupies said property as his principal residence, shall be allowed a credit equal to 40 per cent of the expenditures for design and construction expenses for the repair and replacement of a failed cesspool or septic system pursuant to the provisions of Title V as promulgated by [DEP] in 1995. Said expenditures shall be the actual cost to the taxpayer or \$15,000, whichever is less; provided said credit shall be available to eligible taxpayers beginning in the tax year in which repair or replacement of said cesspool or septic system was completed; provided said credit shall not exceed \$1,500 in any tax year and any excess credit may be applied over the following three subsequent tax years. The amount of any such credit shall be reduced by an amount equal to the total interest subsidy or grant received from the commonwealth, whether directly or indirectly, toward the cost of said expenditures. . . .

##### **1. Who may claim the credit**

To claim the Title 5 credit, the taxpayer must be the owner of the residential property, must occupy the property as his or her principal residence, and may not be a dependent of another taxpayer.

An owner is a taxpayer subject to the provisions of Chapter 62 who, alone or together with other persons, has legal title to the residential property. If a residential property has more than one owner who otherwise meets the criteria for claiming the Title 5 credit, each such co-owner may claim the credit proportionate to the amount of total qualified expenditures made by each co-owner. The maximum aggregate amount of the Title 5 credit that may be

claimed by the owner of a residential property, including multiple co-owners of the property, is \$6000.

A residential property is a property that contains the taxpayer's principal residence. Whether a property is a taxpayer's "principal residence" depends on the facts of each case and the good faith belief of the taxpayer, but ordinarily the residence the taxpayer lives in most of the time is his or her principal residence. A taxpayer is not a dependent of another taxpayer if the taxpayer claiming the non-dependency status does not qualify as a dependent under G.L. c. 62, § 3(b) (3).

In general, taxpayers claiming the Title 5 credit will be Massachusetts residents (including part-year residents) who may or may not be domiciliaries of Massachusetts. (1) However, a nonresident owner of Massachusetts residential property who is subject to Chapter 62, occupies the property as his or her principal residence, and is not the dependent of another taxpayer may claim the Title 5 credit.

## **2. Determining the amount of the credit**

The amount of Title 5 credit allowed is equal to forty percent of the expenditures, incurred for design and construction expenses to repair and replace a failed system, that are the lesser of the taxpayer's actual costs or \$15,000. If a taxpayer has received a below market interest rate loan from the commonwealth, the amount of credit that may be claimed is reduced by the amount of the interest subsidy that has been received by the taxpayer at the time the credit is claimed (including subsidy received in any carryover years in which excess credit is applied to reduce income tax liability). The amount of the interest subsidy is calculated by determining the amount of interest the taxpayer would have paid at the time the credit is claimed using the interest rate set out in G.L. c. 62C, § 32(a), and subtracting from that amount the interest that the taxpayer has actually paid at the time the credit is claimed using the subsidized rate. Interest subsidies refer to low interest rate loans, and betterments, received by owners from the commonwealth to repair or replace a failed system. For more information on calculating the amount of the credit and the interest subsidy, see Schedule SC.

A failed system (2) is one that "fails to protect public health and safety or the environment" as set forth in 310 CMR 15.303 or 15.304. See 310 CMR 15.002. A system is a "failed system" for purposes of the Title 5 credit when it is documented as a "failed system" after inspection by an approved System Inspector, or is determined to be a failed system by the local approving authority or the Department of Environmental Protection. See 301 CMR 15.303, 15.340. A nonconforming system (3) is a failed system if it meets one or more of the conditions of 310 CMR 15.303 or 15.304.

Design and construction expenses for repair and replacement of a failed cesspool or septic system are qualified expenditures for purposes of claiming the Title 5 credit when such expenses are the actual costs paid by the taxpayer for the construction, upgrade or expansion of a failed system authorized pursuant to a Disposal System Construction Permit. (4) See 310 CMR 15.401. Actual cost to the taxpayer means all necessary and reasonable costs paid by

the taxpayer with respect to such repair and replacement, including the costs for construction, materials, machinery and equipment, demolition, relocation, design, engineering, testing, and inspection of such systems.

Actual cost to the taxpayer includes:

1. Expenses incurred to bring a failed system into full compliance through one or more of the following: an upgraded system; an alternative system; a shared system; or connection to a sewer system. See 310 CMR 15.404.
2. Expenses for the upgrade of a component of a failed system when such upgrade is deemed to meet the goal of full compliance as stated in 310 CMR 15.404. See 310 CMR 15.404.
3. Expenses in compliance with a local upgrade approval when full compliance pursuant to 310 CMR 15.404.(1) is not feasible. In such a case, the approving authority shall issue a local upgrade approval authorizing upgrade of the system with the goal of maximizing protection of public health and safety and the environment to the maximum extent feasible. See 310 CMR 15.404(2).
4. Expenses incurred in the event a nonconforming system cannot be upgraded in accordance with 310 CMR 15.404 and 15.405(1), provided the expenses are for the activities stated in 310 CMR 15.405(3)(a) through (3)(d) and relevant provisions cited therein.
5. Expenses incurred due to specific site or design conditions which require that additional criteria be met to achieve the purpose and/or intent of 310 CMR 15.000. See 310 CMR 15.003.(1).
6. Expenses incurred by the taxpayer in 1995 and 1996 for design and construction for the repair and replacement of a failed system pursuant to the relevant provisions of 310 CMR 15.000.

Actual cost to the taxpayer does **not** include:

1. Expenses for any repair or construction of any system that is not a failed system as determined pursuant to 310 CMR 15.000.
2. Expenses for any repair or replacement of a failed cesspool or septic system if the repair or replacement of the failed system is not undertaken pursuant to 310 CMR 15.000 et seq. as promulgated by DEP in 1995. Except as provided, applications for disposal works construction permits filed prior to March 31, 1995, if approved, pertain to systems constructed in accordance with the 1978 Massachusetts Environmental Code. See Transition Rules of 310 CMR 15.005. Expenses for construction undertaken pursuant to the 1978 Code are not qualified expenses. If construction of such a system is not completed within three years of the issuance of the Permit, the provisions of 310 CMR 15.000 shall apply. *Id.* In such a case, expenses for construction undertaken pursuant to 310 CMR 15.000 are qualified expenses if they otherwise meet the requirements of this TIR.
3. Expenses for emergency repair or replacement of systems that are otherwise in compliance with 310 CMR 15.000 and thus are not failed systems. Such emergency repair expenditures include:
  - a. pumping of a septic tank or cesspool as necessary to prevent backup or breakout;
  - b. repair or replacement of one or more structural components of a system

which is otherwise in compliance with 310 CMR 15.000, such as a clogged sewer or distribution line, damaged sewer, septic tank or distribution box, or broken tee for which no modification or alteration of the system design is required. See 310 CMR 15.353.

4. Expenses for any repair or replacement of a failed cesspool or septic system unless a Certificate of Compliance has been issued by the approving authority to the owner of a system in accordance with 310 CMR 15.021 indicating that the failed cesspool or septic system has been repaired or replaced, and inspected, in compliance with 310 CMR 15.000.

### 3. Claiming the credit

General Laws Chapter 62, § 6(i) is effective for tax years beginning on or after January 1, 1997.

The amount of the Title 5 credit that may be claimed in a tax year may not exceed \$1500, but any excess credit amount may be applied against the taxpayer's personal income tax liability in the three tax years following the year in which the credit was initially claimed. The aggregate maximum amount of the Title 5 credit that may be claimed by the owner for a property is \$6000.

The Title 5 credit is available to eligible taxpayers beginning in the tax year in which the work required to repair or replace the failed cesspool or septic system is "completed." G.L. c. 62, § 6(i). "Completed" for the purposes of this TIR means the date, generally on or after January 1, 1997, on which the Certificate of Compliance is issued by the appropriate authority to the owner of the residential property in accordance with 310 CMR 15.021, indicating that a failed cesspool or septic system has been repaired or replaced, and inspected, as necessary, in compliance with the relevant provisions of 310 CMR 15.000 et seq. See 310 CMR 15.002. Certificates of Compliance issued in 1995 or 1996 in accordance with 310 CMR 15.021 will be accepted as evidence by the Department that the work required to repair or replace a failed system has been "completed" and that the owner is eligible to claim the Title 5 credit beginning in tax year 1997.

Taxpayers claiming the Title 5 credit must complete and attach Schedule SC, and a copy of the Certificate of Compliance, to their Form 1 (Massachusetts Resident Income Tax Return) or Form 1-NR/PY (Massachusetts Nonresident/Part-Year Resident Tax Return) at the time of filing.

Mitchell Adams  
Commissioner of Revenue  
December 9, 1997

1. See G.L. c. 62, § 1. ([return to text](#))

2. A "system" is a "system or series of systems for the treatment and disposal of sanitary sewage below the ground surface of a facility. The standard components of a system are: a building sewer; a septic tank to retain solids and scum; a distribution box; a soil absorption system containing effluent distribution lines to distribute and treat septic tank effluent prior to discharge to appropriate subsurface soils; and a reserve area. These terms also include tight tanks,

shared systems and alternative systems. Unless the text of 310 CMR 15.000 indicates otherwise, these terms also include nonconforming systems." 310 CMR 15.002; *see also* 310 CMR 15.280. ([return to text](#))

3. A "nonconforming system" is "any system which is not in full compliance with the standards and requirements of 310 CMR 15.000 and for which a variance or local upgrade approval has not been obtained. Nonconforming systems include, but are not limited to, cesspools, privies, failed systems, and systems with a design flow above 10,000 gpd." *See* 310 CMR 15.002. ([return to text](#))

4. A Disposal System Construction Permit is written approval issued by the approving authority in accordance with 310 CMR 15.020 authorizing the construction, upgrade or expansion of an on-site system. *See* 310 CMR 15.002. ([return to text](#))