Ohio Tax

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Ohio Tax & Jobs 2014...

Real Property Valuation & Classification and JobsOhio

Mark A. Engel, *Partner*, **Bricker & Eckler LLP**, Cincinnati

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Tuesday, January 28, 2014
10:00 a.m. to 12:15 p.m.

Biographical Information

Mark A. Engel, Partner, Bricker & Eckler LLP
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Mark Engel is the partner in charge of Bricker & Eckler's Cincinnati/Dayton office. Mark's practice is taxation, with concentrated experience in all aspects of state and local taxation, including tax planning, compliance, and litigation in sales and use, income, commercial activity, public utility, and property taxation. In addition, Mark works in the areas of economic development, executive compensation, federal personal and corporate taxation, and nonprofit and social enterprise tax issues. He serves as tax counsel to the Ohio Manufacturers' Association and played a key role in helping to design several provisions of Ohio tax reform efforts.

Mark has briefed and argued more than 80 cases in the Supreme Court of Ohio, and appeared in every appellate district in Ohio. He successfully litigated several precedent setting cases involving key issues of state taxation in Ohio. In addition, Mark negotiated numerous incentive packages for enterprises looking to expand in Ohio. He served as tax counsel to the electric industry during industry restructuring, including assisting in drafting numerous tax provisions to the restructuring legislation. He also was heavily involved in legislation to reform the taxation of alternative energy production facilities.

Mark graduated from the University of Michigan with a B.A. in sociology, and received his J.D. and LLM (Taxation) from Capital University Law School.

Ohio Real Property Tax
An Update

23rd Annual Ohio Tax Conference

Presented By
Mark A. Engel, Partner
Bricker & Eckler LLP

January 28, 2014

Overview

Cases:

- Exemption
- Jurisdiction
- Allocated price
- Default to Auditor’s Value
- Arm’s-length sales

Legislation:

H.B. 59 & H.B. 311

Exemption

- *Cincinnati Comm. Kollel v. Testa*
- Property owned by educational institution; students resided there while studying
- R.C. 5709.121(A)(2)
  - Test is whether property is used in furtherance of its exempt purposes and under its control
  - Rejected notion of primary use test as not contained in the statute

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BOR Jurisdiction

- *Groveport Madison BOE v. Franklin Cty. BOR*
  - – Name of owner omitted from complaint
- Information required by statute?
  - – If not, not jurisdictional
  - – Although auditor has duty to notify BOE, checking records allows that
- Standing is presumed, but is subject to inquiry
- See also Univ. Hosp. v. Cuyahoga Cty. BOR

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Value Allocation

- *Sapina v. Cuyahoga Cty. BOR*
- Purchase of business and all assets including real estate
- Allocation requires some “corroborating indicia” of value
- Where evidence supports conclusion that auditor’s value is incorrect, BOR/BTA must determine value based on evidence

Default to Auditor's Value

- *Dublin City Sch. v. Franklin Cty. BOR*
  - Owner introduces evidence
  - BOR reduces value
  - BOE appeals
  - BTA reverses, evidence not probative
- Burden of proof
- Once BOR accepts evidence, BTA has affirmative duty to find value

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Arm's-Length Sales

- Sheriff's sale was not arm's-length
  - *Angel Petroleum v. Cuyahoga Cty. BOR*
- Public auction sale was
  - *Columbus BOE v. Franklin Cty. BOR*
- Sale/leaseback acceptable sale
  - *Columbus BOE v. Franklin Cty. BOR*
- Remote – mere passage of time insufficient
  - *Cincinnati Trophy LLC v. Norwood City Schls.*

Second Filing During Interim

- *OH Retail II LL, LLC v. Franklin Cty. BOR*
- BOE filed complaints in consecutive years
- R.C. 5715.19(A)(2)
- Complaint – wrote in word "may" before box alleging an improvement
- Writing "may" negated affirmative allegation that the changed circumstance actually occurred.

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Legislation

- R.C. 323.152, 4503.065
  - Partial exemption for elderly, disabled
- H.B. 59
  - Exemption only if income <$30,000
  - Grandfather existing properties and owners
- H.B. 311
  - Extended grandfather status to any person who already receives the exemption, even for subsequently-purchased properties

Legislation

- H.B. 59
  - 10% rollback and 2.5% homestead exemption
  - Effective 1/1/14, will not apply to new or replacement levies
  - Will continue to apply to existing or renewal levies
- Locals were reimbursed the reduction by state GRF
- Shifts burden back to property owner

QUESTIONS?

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Real Property Tax Update – 2013

23rd Ohio Tax Conference
January 28-29, 2014

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Exemption:

In *Cincinnati Community Kollel v. Testa*, 135 Ohio St. 3d 219, 2013-Ohio-396, the Supreme Court ruled that under R.C. 5709.121(A)(2), property that was used as the residence of theological students, but that also served as areas of study, qualified for exemption. Kollel was established as an educational institution, and the property was made available to the students under its control and in furtherance of its exempt purposes. It rejected the BTA's use of a primary use test with respect to the statute and thereby rejected the argument that a residential use of the property automatically defeated the claim of exemption.

In *Southern Hills Baptist Association v. Testa*, BTA No. 2011-717 (Oct. 23, 2013), the BTA ruled that property used for mission support and religious training was not exempt under R.C. 5709.07 as property used exclusively for public worship. Such activities may have been supportive of public worship, but did not, themselves, constitute public worship. In a footnote, the Board noted that it was making no finding on whether the use of the property qualified as a charitable use under R.C. 5709.121.

In *Barberton Bank Boosters, Inc. v. Testa*, BTA No. 2012-2252 (Oct. 23, 2013), the BTA ruled that property used by a school booster group for bingo and to raise money for other activities was not entitled to a charitable exemption under R.C. 5709.12. The Board noted that the only evidence of use, as sparse as it was, was in the attachments to the application for exemption.

In *Ashland County Park Dist. v. Testa*, BTA No. 2010-3723 (Dec. 5, 2013), the BTA ruled that property held by a county park district, but enrolled in the current agricultural use value program and farmed, did not qualify for a public use exemption under R.C. 5709.07. The Board noted that the use of the property in the CAUV program precluded a finding the property was used exclusively, or primarily, for public purposes.

In *City of Wooster v. Levin*, BTA No. 2009-620 (May 31, 2013), the BTA denied exemption for property that was acquired by a city on behalf of a public hospital for future expansion. In the meantime, the property was used as a residence by a construction manager in charge of other construction projects on behalf of the hospital. The Board ruled that such a use, being residential in nature, was inherently private, and did not further the public purposes of the city.

In *Johnson v. Green County Bd. of Revision*, BTA No. 2012-5109 (May 31 2013), the BTA ruled that an individual was entitled to the 2.5% rollback for the homestead exemption provided by R.C. 323.152 for a property at which he resided, notwithstanding the fact that he had received the same exemption for another property. The evidence showed that this property was indeed used as the owner's primary residence, such that it qualified for the exemption. The Board refused to speculate whether he was entitled to the exemption with respect to the other property or any remedy that might be available.

In *Heskett Land Dev. Co., LLC v. Testa*, BTA No. 2012-1485 (Aug. 8, 2013), the BTA upheld a finding of the Tax Commissioner that the official had no jurisdiction to consider an exemption application where taxes remained unpaid for periods beyond those for which remission was available under R.C. 5713.081.

In *Pump House Ministries v. Levin*, BTA No. 2010-794 (Oct. 2, 2013), the BTA held that the owner of an entity that in turn owns a parcel of real property may not file for exemption for the parcel. R.C. 5709.27(A) specifically provides that the owner of real property may file for exemption. The Board relied upon a long-standing rule recognizing the separate nature of separate legal entities.

In *Vineyard Ministries, LLC v. Levin*, BTA No. 2010-2959 (May 24, 2013), the BTA upheld a determination of the Tax Commissioner that property held by a religious organization and used for recreational purposes did not qualify for exemption as a house used exclusively for public worship under R.C. 5709.07.

In *Bd. of Edn. v. Levin*, BTA No. 2010-1292 (Oct. 16, 2013), the BTA upheld a determination of that Tax Commissioner that a parcel of land annexed into the city of Columbus in order to connect another parcel used by a port authority for economic development purposes also qualified for the port authority exemption under R.C. 4582.20 and 4582.46. The parcel facilitated the development of the adjoining parcel, hence it was deemed used for similar purposes and qualified for the exemption.

<u>Jurisdiction</u>:

In *Univ. Hosps. Health Sys., Inc. v. Cuyahoga Cty. Bd. of Revision*, 2013-Ohio-1665 (8th Dist.), the Court of Appeals ruled that a valuation complaint that listed a partial, but incomplete, name of the owner, nevertheless vested the BOR with jurisdiction over the complaint. The Court of Appeals noted there was only one "University Hospital" in the county and that a review of county records would have disclosed the complete name of the owner of the parcel listed in the complaint.

In *Gevaldig Ents. LLC v. Steen*, 2013-Ohio-377 (8th Dist.), the Court of Appeals ruled that the failure of a property owner to take a timely appeal from a decision of the BOR precluded jurisdiction of the appeal by the court of common pleas. Notice of the BOR hearing and decision had been sent to the address provided by the property owner on the complaint, but the owner claimed he never received the notices. In addition, the owner never contested the arm's-length nature of the sale upon which the BOR's decision was based. Finally, the Court of Appeals ruled that the relief from judgement provisions under Rule 60 did not apply to excuse the owner from failing to file its appeal within the 30-day appeal period prescribed by statute.

In *OH Retail II LL, LLC v. Franklin Cty. Bd. of Revision*, 2013-Ohio-5705 (10th Dist.), the Court of Appeals affirmed the finding of the BTA that the complaint filed by the board of education violated the one-filing rule of R.C. 5715.19(A)(2). The statute provides that a second complaint may be filed if the complaint alleges the occurrence of one of four circumstances. On the complaint, however, the BOE noted that one of the changes "may" have occurred. The Court of Appeals held this action negated the affirmative allegation that the circumstance had occurred; therefore, the second complaint was precluded by the statute.

In *Owen v. Perry Cty. Bd. of Revision*, 2013-Ohio-2303, the Court of Appeals ruled that an unresolved application for current agricultural use value was not a substitute for a valuation complaint for a subsequent year. Because a valid complaint was not filed, the BOR had no jurisdiction to consider the value of the property outside of the CAUV program.

In *Simic v. Cuyahoga Cty. Bd. of Revision*, 2013-Ohio-3000 (8th Dist.), the Court of Appeals held that in an appeal from the BOR to the court of common pleas, the requirement in R.C. 5717.05 that the notice of appeal be filed with all parties before the BOR was jurisdictional. The Court of Appeals relied upon an earlier decision of the supreme court that the statutory requirement to provide notice to all parties was jurisdictional because the lack of notice could

In *Powell v. Cuyahoga Cty. Bd. of Revision*, 2013-Ohio-2460 (8th Dist.), the Court of Appeals ruled that the failure of the BOR to provide notice of a hearing to the property owner deprived the BOR from jurisdiction to go forward and determine the value of the property. The Court of Appeals remanded the matter for a new hearing.

In *Groveport Madison Bd. of Edn. v. Franklin Cty. Bd. of Revision*, __ Ohio St. 3d __, 2013-Ohio-4627, the Supreme Court held that omitting the name of the owner of a parcel from the valuation complaint was not a jurisdictional defect. Naming the owner on a complaint is not required by statute, therefore it was not deemed to be a jurisdictional requirement. The auditor is required to give notice of the complaint to the owner, but the Court refused to impute a jurisdictional aura over a duty imposed upon another party. It also noted that although standing was presumed, and there was an allegation that the party named on the complaint owned other property in the county, the issue of standing could be raised and the party against whom it was raised would have to prove that it had standing to file the complaint.

In *Marysville Exempted Village School Distr. Bd. of Edn. v. Union Cty. Bd. of Revision*, 136 Ohio St. 3d 146, 2013-Ohio-3077, the Court held that an employee of the company that owned a parcel of real estate could sign the valuation complaint and vest jurisdiction with the BOR. The individual was among those named by the General Assembly as persons who could file on behalf of an owner. Because a salaried employee and the employer have a long-standing relationship of accountability, the Court would not reverse the decision of the General Assembly to permit such individuals to file valuation complaints.

In *Bd. of Edn. of Columbus City Schools v. Franklin Cty. Bd. of Revision*, BTA No. 2011-1343 (Oct. 10, 2013), the BTA held that a parcel of property on the exempt list could not be the object of a valuation complaint because the parcel did not appear on the auditor's list of taxable property.

<u>Valuation</u>:

In *Sylvania City Schools Bd. of Edn. v. Lucas Cty. Bd. of Revision*, 2013-Ohio-319 (6th Dist.), the Court of Appeals affirmed a finding of value made by the BTA. In the appraisal report upon which the BOR relied, the appraiser had both taken taxes as an expense in computing net income, and also included them in the capitalization rate applied against the net income. The BTA had removed the taxes as an expense in computing value and the Court of appeals affirmed, noting that the appraiser's action effectively accounted for taxes twice.

In *CSE Canton LLC v. Stark Cty. Bd. of Revision*, BTA No. 2010-31, (Mar. 29, 2013), the BTA held that the price at which the property sold approximately 12 months prior to tax lien date was the value of the property. It rejected the claim that the price paid including going concern value for the business conducted on the property for lack of proof. The BTA noted that on the conveyance fee statement, the entire purchase price has been allocated to the real property.

In *Angel Petroleum v. Cuyahoga Cty. Bd. of Revision*, BTA No. 2012-816 (July 8, 2013), the BTA ruled that the price paid at a sheriff's sale did not represent the value of the property because such a transaction was not arm's-length in nature. The seller in such an instance was not deemed to be acting as a typical seller in the market, but rather was forced to sell the property.

In *Davis v. Butler Cty. Bd. of Revision*, 2013-Ohio-3310 (12th Dist.), the Court of Appeals ruled that a BOR may not increase the value of a parcel based upon evidence gathered after its hearing and not subject to rebuttal by the property owner. At the same time, the Court of Appeals ruled that the BOR was not required to accept the property owner's evidence of value.

In *Sightless Children Club v. Montgomery Cty. Bd. of Revision*, 2013-Ohio-3282 (2d Dist.), the Court of Appeals reversed the decision of the court of common pleas that placed a value of $0 on a parcel which the owner claimed was used for exempt purposes. In essence, the BOR determined that the property was exempt from taxation, which it had no jurisdiction to do, and the court of common pleas had no basis to affirm that decision.

In *Bd. of Edn. of Olentangy Local Schools v. Delaware Cty. Bd. of Revision*, 2013-Ohio-2892 (5th Dist.), the Court of appeals ruled that the BTA correctly reversed a decision of the BOR and reinstated the value determined by the auditor. The only evidence presented by the property owner consisted of the assessed value of a near-by parcel, without any expert comparison or determination of value. In such as case, it was error for the BOR to find a different value, and it was permissible for the BTA to reinstate the auditor's value.

In *Bd. of Edn. of Dublin City Schools v. Franklin Cty. Bd. of Revision*, __ Ohio St. 3d __, 2013-Ohio-4543, the Court discussed the situations in which the BTA could default to the auditor's value. In this case, the taxpayer had presented evidence that tended to contradict the auditor's value, and the BOR ordered a reduction. On appeal to the BTA, the BOE argued that the evidence presented by the owner was not credible, but presented no independent evidence of value. The BTA reversed the BOR's decision and reinstated the auditor's value. The Supreme Court held this was error. It acknowledged that the initial burden of proof resides with the person filing the complaint. However, where evidence is introduced at the BOR and accepted by the BOR, the burden of proof on appeal shifts to the party taking the appeal. By presenting no evidence, the BOE failed to sustain its burden of proof. While the BTA is not required to accept the evidence of any party, once the BOR as accepted the evidence, the BTA has a duty to determine the value of the property and may not reinstate the auditor's value.

In *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St. 3d 188, 2013-Ohio-3028, the Supreme Court discussed the property allocation of a lump sum purchase price among the various assets in a transactions. In the instant case, the property owners acquired a business that included the building in which the business was conducted, as well as various items of personal property and good will; however, the agreement failed to make an allocation among the assets. Facts indicated that the full purchase price was not appropriate. The Court looked for "corroborating indicia" to support an allocation and, based upon the evidence presented, remanded the case for the BTA to make a determination of value based upon the evidence presented. Factors such as prior assessed value, the amount of a mortgage, or an appraisal, could all be used in this endeavor.

In *Jewel Acquisitions LLC v. Testa*, BA No. 2012-3129 (Dec. 5, 2013), the BTA upheld an assessment of personal property that disregarded a recent sale of the assets because the taxpayer failed to establish the basis for allocating the price among the various assets. Instead, the BTA upheld the use of the tax commissioner's 302 Computation as applied to the historical cost of the assets.

In *Bd. of Edn. of Columbus City Schools v. Franklin Cty. Bd. of Revision*, BTA No. 2012-3451 (Oct. 18, 2013), the BTA ruled that the price paid at public auction for a property met the requirements of an arm's-length transaction such that it represented the value of the property. There was no evidence that the sale was under duress and it was open to the public.

In *Bd. of Edn. of Columbus City Schools v. Franklin Cty. Bd. of Revision*, 2013-Ohio-4504 (10th Dist.) the Court of Appeals ruled that a sale between a landlord and tenant could still be arm's-length; further, that a sale-leaseback transaction was a valid sale for determining the value of the property that was sold.

In *Cincinnati Trophy LLC v. Bd. of Edn. of Norwood City School Dist.*, 2013-Ohio-5387 (1st Dist.), the Court of Appeals held that a sale conducted 19 months prior to lien date was sufficiently recent that the sales price represented the value of the property. Although the owner submitted an appraisal report that concluded to a significantly lower value, the owner failed to show a change in circumstances between the date of the sale and the lien date to prove that the sale was "remote." The mere passage of time is not sufficient.

In *West Third Bridge Building LLC v. Cuyahoga Cty. Bd. of Revision*, BTA Nos. 2012-1554 through 1556 (Dec. 5, 2013), the BTA rejected the claim that a sale of the subject property was not arm's-length because it was under duress. The BTA noted that "duress" connoted a disparate position in bargaining power such that one person was essentially held hostage to the other. In this case, the BTA ruled that the purchaser's desire to keep adequate parking for its other parcels did not rise to such a level.

In *Bd. of Edn. of Dublin City Schools v. Franklin Cty. Bd. of Revision*, BTA No. 2011-1858 (Nov. 13, 2013), the BTA held that an appraisal based upon a discounted cash flow analysis was not acceptable, as the method was too speculative and could often result in an understatement of value.

In *Pine Apartments of Kenton, Ltd. Partnership v. Hardin Cty. Bd. of Revision*, BTA Nos. 2011-2748, 2013-3343 (Oct. 28, 2013), the BTA held that the value of property subject to low income housing tax credits had to be determined with reference to the limitations on rents imposed by the program.

In *Cabot III-OH1M02, LLC v. Franklin Cty. Bd. of Revision*, 2013-Ohio-5301 (10th Dist.), the Court of Appeals ruled that when a parcel, part of which was taxable and part of which was exempt, was sold, the burden was on the person relying upon the sale to determine the allocation of the value between the two parts. Absent such proof, the allocation made by the county auditor will be upheld.

In *Yost v. Lorain Cty. Bd. of Revision*, BTA Nos. 2011-3423 et al (Nov. 27, 2013), the BTA held that the submission of extensive sales analysis of other properties, provided without a conclusion of value, was not sufficient for the BTA to make a determination of value.

In *Coventry Courts, LLC v. Cuyahoga Cty. Bd. of Revision*, BTA No. 2012-1118 (Dec. 5, 2013), the BTA held that where the audio tape of the hearing conducted by the BOR was completely inaudible, the case would be remanded back to the BOR for a new hearing.

In *SSN II, LTD. v. Warren Cty. Bd. of Revision*, 2013-Ohio-1112 (12th Dist.), the Court of Appeals affirmed a decision of the court of common pleas that sustained a higher value for property and rejected the argument that some of the components of the parcel were personal, rather than real property. The property in question was a golf course and the taxpayer argued that features such as tee boxes, cart paths, water hazards, fairways, bunkers, roughs, and holes were all business fixtures and should be classified as personal property pursuant to R.C. 5701.02 and R.C. 5701.03. The Court of Appeals reasoned that the items in question were real property rather than personal property, so that the question of whether they were business fixtures did not need to be addressed.

In *Scranton-Averell, Inc. v. Cuyahoga Cty. Bd. of Revision*, 2013-Ohio-697 (8th Dist.), the Court of Appeals upheld the decision of the court of common pleas to reduce the value of the subject parcels to $1,000 each. The evidence demonstrated the parcels were improved with dilapidated buildings and that the cost to remove the buildings exceeded the value of the land. The BOE introduced no evidence. The BOR had reduced the value of the buildings, but increased the value of the land. The Court of Appeals found that the only competent evidence of record established that the costs to raze the buildings exceeded the improved value of the parcels, hence the court of common pleas based its decision on evidence and the Court of Appeals would not second guess that decision.

In *Bd. of Edn. for Nordonia Hills City School Dist. v. Summit Cty. Bd. of Revision*, BTA No. 2010-2798 (Feb. 26, 2013), the BOR determined that a change in tenancy was not sufficient to render a sale occurring 18 months after tax lien date remote.

In *Sunstar Akron, Inc. v. Summit Cty. Bd. of Revision*, 2013-Ohio-682 (9th Dist.), the Court of Appeals held that where a sale was considered and rejected in one year of a three-year interim period, it did not provide a basis for a filing in a subsequent year of the same interim period.

Tax Certificates:

In *CapitalSource Bank FBO Aeon Fin.LLC v. Donshirs Development Co*., 2013-Ohio-563 (8th Dist.), the Court of Appeals held that the one-year saving statute in R.C. 2305.19 applied to preserve the foreclosure efforts of Aeon where it had attempted to commence foreclosure action within the 120-day period specified by R.C. 5721.37(C), had its original complaint dismissed for procedural reasons without prejudice, and later re-filed within one year of the original action.

In *Ankenman v. Rhea Academy, Inc*., 2013-Ohio-296 (2nd Dist.), the Court of Appeals held in the case of dueling lien holders that the holder of a tax lien on the property by virtue of owning tax certificates under R.C. Chapter 5721 had priority over a judgement creditor that had acquired its lien previous to the certificate holders.

Legislation:

Am. Sub. H.B. 59 changed the manner in which two exemptions applicable to residential property will apply in the future. Currently R.C. 323.152 provides a partial exemption of 2.5 percent for owner-occupied residential property owners who are totally disabled or at least 65 years old. This credit applies regardless of the owner's income level. Persons who currently qualify for the exemption will be unaffected, but the bill changes the credit so that persons who are not yet old enough to qualify for the credit will be means-tested when they attain age 65. Owners with annual incomes above $30,000 will not be eligible for the exemption. This threshold is indexed for inflation. Individuals applying for the reduction will also have to permit the county auditor to examine any financial records relating to income earned by the applicant.

With respect to new or replacement levies imposed after August 2013, the 10 percent property tax rollback for residential and agricultural property provided by R.C. 319.302 is eliminated. The additional 2.5 percent exemption for owner-occupied residential property is also eliminated. Existing and renewal levies will not be affected and remain subject to the 12.5 percent reduction; such levies are referred to as "qualifying levies" in the bill.

These changes are effective with the 2014 calendar year.

Am. Sub. H.B. 311 amended R.C. 323.152 and R.C. 4503.065 regarding the homestead exemption. It grandfathers any owner who previously received the reduction so that the means-test does not apply to them. This change is effective December 19, 2013.

The Tax Commissioner has issued two bulletins providing an explanation of these changes, copies of which are attached.

Reappraisal/Update Schedule:

A copy of the reappraisal and update schedule for the years 2014-2019 has been issued by the Department and is attached to these materials. Remember that counties scheduled to perform a reappraisal or update for tax years 2016 also were scheduled to perform those functions for tax year 2013. Valuation complaints for tax year 2013 are due March 31, 2014.

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TO: County Auditors, County Treasurers, and Computer Companies

FROM: Shelley Wilson, Executive Administrator, Tax Equalization Division

RE: Applying Rollbacks to Qualified versus Non-qualified Levies, per Amd. Sub. H.B. 59, 130th General Assembly

DATE: July 30, 2013

As part of the recently passed state budget, beginning with tax year 2013 the ten and two and one-half percent rollbacks will no longer apply to new levies that are enacted after the August 2013 election. These non-qualifying levies include additional levies, the increase portion of renewal with increase levies, and the full effective millage of replacement levies. Levies that will continue to qualify for application of the rollbacks are levies approved at or before the August 2013 election, inside and charter millage as they appear on the 2013 tax list, renewals of qualified levies, and the substitute of qualified school district emergency levies under Revised Code section 5705.199.

Several weeks ago staff from the Department of Taxation met with representatives from local government groups to discuss changes in the recent budget bill as they would impact those groups. One of the major topics of discussion was how to implement the elimination of the rollbacks on new tax levies. At that time, the department was favoring a method wherein rollbacks would be calculated for the full effective millage, and then the portion attributable to the non-qualified levies would be added back to the tax calculation. After news of that solution spread, an alternative approach was suggested that we believe provides a cleaner and easier to implement solution.

<u>Adjusted Rollback Factors</u>

Both rollback percentages will be adjusted by weighting the effective rate of qualified levies against the total effective rate of the district and multiplying the result by the full rollback percentage. Here's a sample calculation:

Full Effective Millage	72.943642
Effective Millage of Qualified Levies	67.943642

10% Rollback Factor = (67.943642/72.943642)(0.10), or 9.3145%
2 ½% Rollback Factor = (67.943642/72.943642)(0.025), or 2.3286%

In the tax calculation, the amount remaining after the application of tax reduction factors will be reduced by 9.3145% instead of 10% and by 2.3286% instead of 2 ½%, as shown below.

Tax Calculation Following Passage of an Additional Levy 11/5/2013

$100,000 owner-occupied house
Full Rate 105.560 mills
Reduction Factor 0.308984
Effective Tax Rate 72.943642
Non-qualifying levy with 0.000000 reduction factor 5.00 mills

Gross Taxes	$3,694.60	
Tax Reduction	-1,141.58	
Subtotal	$2,553.02	
10% Rollback	- 237.80	($2,553.02 x 0.093145)
2 ½% Rollback	- 59.44	($2,553.02 x 0.023286)
Current Net Taxes for the Year	$2,255.78	

The same adjusted rollback factors will also be used to calculate the homestead credit. See the example for a homestead credit calculated for the property shown above.

Gross Taxes	$ 923.64	
Tax Reduction	- 285.38	
Subtotal	$ 638.26	
10% Rollback	- 59.44	($638.26 x 0.093145)
2 ½% Rollback	- 14.86	($638.26 x 0.023286)
Homestead Credit for the Year	$ 563.96	

The Department of Taxation will calculate the rollback adjustment factors for Class I and Class II in each taxing district. The rollback factors will be certified to the county auditor at the same time as the tax rates in a separate report which will be available both on paper and in an electronically executable format. Our Information Services Division is currently developing those products, and we will make technical specifications for the electronic product available to you as soon as they are complete. A mock-up of the paper report is enclosed to give you an idea of the format in which you will receive this information.

<u>Nomenclature</u>

In order to avoid confusion and potential taxpayer frustration we are also going to change the mandatory labels that appear on the tax bill. Since the 10% rollback will no longer be a full ten percent, instead we will label it the “Non-Business Credit”, which is how it is framed in statute. Likewise, since the 2 ½% rollback will be less than two and one-half percent, it will be referred to as the “Owner Occupancy Credit”, which is also a more descriptive term for what it actually is. Counties should plan to use the new terms in their computer systems and on their tax bills.

Identifying Qualified Levies

The Department of Taxation will identify qualified levies using the information that is already collected in filing the DTE 27, Tax Rate Abstract. A new field will be added to that report to indicate whether a levy is qualified for reimbursement or not, and that flag will be set to "Y" for all levies in existence for tax year 2012. For levies being entered or altered on the 2013 DTE 27, individual determinations will be made by the department based on date of vote, levy type, and method of enactment.

Tax Bills

Beginning with tax year 2013, tax bills will need to use the revised rollback labels in the calculation and list the two rollback factors unique to the taxing district and class in addition to the effective tax rate.

Conclusion

We have tried to provide you with a mechanism to implement this change as smoothly as possible. If you have questions about this process, you are welcome to contact either Laura Lackey at (614) 466-6365 or myself by telephone at (614) 466-5744 or by email at Laura.Lackey@tax.state.oh.us or Shelley.Wilson@tax.state.oh.us .

SW/LL/cmz
Enclosure

Bulletin 23
Revised 11/13

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THE HOMESTEAD EXEMPTION FOR THE AGED, DISABLED, AND SURVIVING SPOUSE

Table of Contents

Introduction

The purpose of this Bulletin is to assist Ohio's county auditors in administering the homestead exemption program for both real property and manufactured homes.

The definitions and general requirements for the homestead exemption for manufactured or mobile homes are identical to those for the homestead exemption for real property. Consequently, the guidelines in this Bulletin generally apply to both exemptions. Only procedural differences exist in the application processes of the two programs. Those differences are explained in the two sections on Application Procedures. All other provisions apply equally to both programs, unless otherwise noted. In addition, a final section explains the special procedures for housing cooperatives.

Appendix A contains a list of the Revised Code sections pertaining to the real property, manufactured or mobile home, and housing cooperative homestead exemption programs, as they existed on November 1, 2013, and the web site from which to obtain them. Appendix B contains a list of the forms prescribed by the Tax Commissioner for all three programs and the web site from which to obtain them. These official forms must be used in all counties, unless the Tax Commissioner approves the use of alternate forms.

This Bulletin replaces the Homestead Exemption Manual revised in October, 2010. Am. Sub. H.B. 59, passed June 27, 2013, and effective September 29, 2013, has made significant changes to who will qualify for the Homestead exemption on a going-forward basis. Persons currently receiving Homestead will not see their status reviewed, nor will the income thresholds put into place by the new law affect their exemption. However, those who turn 65 in 2014, 65 in an earlier year but did not qualify for the homestead exemption for tax year 2013, (2014 for manufactured and mobile homes) or who become disabled after January 1, 2013, will be required to have Ohio qualifying income below a certain threshold in order to receive a homestead exemption based upon age or disability.

Please note, the requirements regarding a physician's certificate for physical disabilities have been changed. This change is not based upon any amendment to the enabling statutes, but merely to more accurately reflect the requirements imposed by law.

Application Procedures - Real Property

1. Types of Applications

Original Applications

An original application for the current tax year must be filed with the county auditor after the first Monday in January and on or before the first Monday in June. “Filed” means received by the auditor’s office, not postmarked by the due date. For example, the filing period for tax year 2014 is from January 7, 2014, to and including June 2, 2014. The applicant should file DTE Form 105A and check the box labeled “current application.” An applicant’s filing based on disability must include a physician’s certificate or a statement from a federal or state agency. See pages 12-15 of this Bulletin.

Late Applications

An applicant may file a late application for the year preceding the current year along with the original application simply by checking the box labeled “late application for prior year” on the same DTE Form 105A that is filed for the original application. For example, a late application for tax year 2013 may be filed along with the original application for tax year 2014 between the same dates mentioned above for the filing of the original application. Note: the late application only applies to the same homestead that is the subject of the original application, not a prior homestead that has been sold or is no longer occupied as the domicile.

Continuing Applications

Every January, the county auditor sends by ordinary mail a continuing application to each person who received the homestead exemption for the preceding year. DTE Form 105B is prescribed for this purpose. The applicant uses this form to report any changes in the information previously reported to the auditor affecting the applicant’s eligibility for the exemption. The applicant must return this form by the first Monday in June to the auditor only if the changes affect the applicant’s eligibility for the exemption. If the applicant received a homestead exemption for tax year 2013, only three things could change to affect eligibility: a change in ownership, a change in domicile, and a change in disability status. The income threshold enacted by Am. Sub. H.B. 59 does not apply. However, if the applicant was required to meet the income threshold when originally applying for homestead, then the applicant must report any changes in income on the DTE Form 105B.

Continuing Application/Change in Residency

Am. Sub. H.B. 59 creates a new class of homestead exemption recipients. Persons who received a homestead exemption on any property within the state for tax year 2013 may move to a new residence within the state and qualify for the homestead exemption on a new, otherwise qualifying home without meeting the income threshold test imposed upon new applicants. The homeowner must present sufficient evidence to the auditor so that the auditor can verify the existence of a homestead exemption for tax year 2013. DTE Form 105G has been created for this purpose.

2. Procedures Following Approval or Denial

Approved Applications

Original Applications

When an original application is approved, the auditor shall so notify the applicant by the first Monday in October. DTE Form 105F is prescribed for this purpose. The auditor shall record the amount of the homestead reduction on the real property tax list and duplicate. The reduction is shown as a credit on the tax bill.

Late Applications

When a late application is approved, the county auditor sends the same notification described under "Original Applications" above, but treats the reduction as an overpayment of taxes and refunds it pursuant to R.C. 5715.22. If the auditor approves the late application in time to change the second-half tax bill for the preceding tax year, the whole year's reduction is credited against that bill. Any remaining refund balance is paid by warrant. If the late application is not approved in time to change the second-half tax bill, or if the full year's tax liability was paid at the first half, then the whole reduction is paid by warrant.

Denied Applications

If an application is denied, the auditor notifies the applicant of the reasons for denial on or before the first Monday in October. DTE Form 106A is prescribed for this purpose. For example, if an original or continuing application for tax year 2014, or a late application for tax year 2013, is denied by the county auditor, the auditor notifies the applicant by October 6, 2014.

If the applicant believes that the application was improperly denied, or that the amount of reduction is too low, the applicant may file an appeal with the county board of revision on or before the due date for the next, first-half real property tax bill following the county auditor's denial. DTE Form 106B is prescribed for this purpose.

Application Procedures - Manufactured or Mobile Homes

1. Types of Applications

Original Applications

Because the manufactured home tax is paid currently, the homestead exemption application must be filed in the year prior to the year for which it applies. Therefore, an original application for a tax year must be filed with the county auditor on or before the first Monday in June of the preceding year. Note: no filing period exists for this exemption, only a filing deadline. "Filed" means received by the county auditor's office. For example, for tax year 2014, the filing deadline is June 3, 2013. The applicant should file DTE Form 105A and check the box labeled "current application." An applicant's filing based on disability must include a physician's certificate or a statement from a federal or state agency. See pages 12-15 of this Bulletin.

Late Applications

An applicant may file a late application for the current year along with the original application for next year simply by checking the box labeled "late application for prior year" on the same DTE Form 105A that is filed for the original application. For example, a late application for tax year 2013 may be filed along with the original application for tax year 2014 by June 3, 2013. Note: the late application only applies to the same homestead that is the subject of the original application, not a prior homestead that has been sold or is no longer occupied as the domicile.

Continuing Applications

Every January, the county auditor sends by ordinary mail a continuing application to each person receiving the reduction for the current year. DTE Form 105B is prescribed for this purpose. The applicant uses this form to report any changes in the information previously reported to the auditor affecting the applicant's eligibility for the exemption. This form must be returned by the first Monday in June to the auditor only if the changes affect the applicant's eligibility for the exemption. If the applicant received a homestead exemption for tax year 2014, only three things could change to affect eligibility: a change in ownership, a change in domicile, and a change in disability status. The income threshold enacted by Am. Sub. H.B. 59 does not apply. However, if the applicant was required to meet the income threshold when first applying for homestead, then the applicant must report any changes in income on the DTE Form 105B.

2. Procedures Following Approval or Denial

Approved Applications

Original Applications

When an original application is approved, the county auditor shall so notify the applicant by the first Monday in October. DTE From 105F is prescribed for this purpose. The auditor shall record the amount of homestead reduction on the real property tax list and duplicate. The reduction is shown as a credit on the tax bill.

Late Applications

When a late application is approved, the county auditor sends the same notification described under "Original Applications" above, but treats the reduction as an overpayment of taxes. Accordingly, the whole year's reduction is credited against the second-half tax bill for the current tax year. Any remaining balance is paid by warrant. If the late application is not approved in time to change the second-half tax bill, or if the full year's tax liability was paid at the first half, then the whole reduction is paid by warrant.

Denied Applications

If an application is denied, the auditor notifies the applicant of the reasons for denial on or before the first Monday in October. DTE Form 106A is prescribed for this purpose. For example, if an original or continuing application for tax year 2014, or a late application for tax year 2013, is denied by the county auditor, the auditor notifies the applicant by October 7, 2013.

If the applicant believes that the application was improperly denied, or that the amount of reduction is too low, the applicant may file an appeal with the county board of revision on or before January 31 of the following calendar year. DTE Form 106B is prescribed for this purpose.

Ownership Issues

1. Homestead Must be Applicant's Domicile

General Rule

To qualify for the homestead exemption, an applicant must own and occupy the homestead as the applicant's domicile. Exceptions to the ownership requirements exist for a housing cooperative. See pages 30-32 of this Bulletin for details. An individual can have several residences, but only one domicile. The "domicile" is the individual's legal home, the permanent residence, and the place to which the applicant intends to return when residing elsewhere. The domicile generally controls, for example, a state's income taxing jurisdiction and determines where an individual may exercise the privilege of voting and other legal rights and privileges.

Multiple Owners

If several individuals own several homes, but each one lives in a separate home as that individual's domicile, then each owner can qualify for the homestead reduction on that owner's domicile. For example, suppose that three brothers own three houses, either as joint tenants or as tenants in common, and each brother occupies one of those homes as his domicile. Each brother may file an application and qualify for the homestead exemption on his own domicile.

Married Couples

For homestead exemption purposes, a married couple is presumed to have only one domicile and, hence, only one homestead exemption between them. To rebut that presumption, the burden of proof is on the applicants to show that they are maintaining separate domiciles. The county auditor must weigh the totality of the evidence. For example, some indicia of an individual's domicile would be (1) the state of issuance for the driver's license, (2) the address for voting purposes, (3) the number of days the spouse lived in each residence or in each state, if different states are involved, (4) phone records showing the level of activity at each residence, if such records exist, (5) utility bills showing the level of activity at each residence, and (6) perhaps the most important piece of evidence, where and how each spouse files their state income tax returns.

Concerning the income tax returns, if a spouse files a nonresident Ohio income tax return or files an income tax return as a resident of another state, that individual should not receive the Ohio homestead exemption. If that individual is not filing an Ohio income tax return at all, further inquiry is necessary to discover the reasons for not filing before deciding how the nonfiling affects the determination of domicile. For applications filed for 2014 and beyond, the application contains authority for the county auditor and Tax Commissioner to consider financial and or tax records, either individually or in consultation with each other. By signing the application, the applicant will acknowledge that the application constitutes a waiver of the confidentiality provisions contained in R.C. 5747.18 for the purposes of qualifying for the Homestead exemption or determining a violation of the program.

Nursing Homes

Since the issue of one's domicile is a matter of intent and actions to support that intent, the county auditor must judge each application on a case by case basis. For example, a person may go into a nursing home to recuperate from surgery and fully intends to, and actually does, return to the former dwelling place. Hence, that person's domicile has never changed, and it remains eligible for the homestead exemption.

On the other hand, a person may go into a nursing home and intend at the outset never to return to the former dwelling place or does intend to return to the former dwelling place, but never actually does return. In the former case, the applicant admits that the former dwelling place is not the person's domicile, and, as a result, that property cannot qualify for the homestead exemption for the year after the year in which that person moved into the nursing home. In the latter case, the county auditor must determine when the applicant's intention to return to the former dwelling place has been abandoned, resulting in a loss of the homestead exemption.

2. Who is Considered an Owner

For real property, the types of ownership are explained in the section on "Ownership." For manufactured or mobile homes, an owner is anyone whose name is on the title, or who is the settlor of a revocable inter vivos trust, or a trustee of a trust, as explained in the section on "Ownership."

Moreover, for both real property and manufactured or mobile homes, ownership may not be acquired from a person, other than a spouse, related by blood or marriage for the purpose of qualifying for the homestead reduction. Although it is difficult to look inside the mind of an individual to determine one's intent, the following scenarios seem to be obvious results of the aforementioned statutory requirement. For example, a child cannot add an aged parent's name to the deed and move that parent into the home and qualify for the homestead exemption. On the other hand, an aged parent can add the child's name to the deed of the parent's home, or the parent and child can jointly purchase a home together, and still qualify for the homestead exemption. Moreover, a disabled child could inherit a home from the deceased parent and still be eligible for the homestead exemption, since the transfer was not for the purpose of qualifying for the homestead reduction. Finally, a transfer of a home by the aged parents, who are already receiving the homestead exemption, to a disabled child should not prevent the child from qualifying for the homestead exemption, even if the parents remain in that home, since the transfer could not have been for the purpose of qualifying for the homestead reduction because the parents were already receiving it.

3. When Must Applicant Own the Home

General Rule

To qualify, an applicant must own and occupy the homestead as the domicile, whether it is real property or a manufactured or mobile home, on January 1 of the year for which the exemption is sought and at the time of filing the application. If a property owner dies before filing an application, no one can file the application on the deceased owner's behalf. If the property is transferred after a qualified applicant files an application, the tax reduction is not forfeited or prorated for such year because of the transfer. The property will receive a full year's exemption, even though the purchaser may receive the benefits of the exemption.

Homestead in Probate

This section discusses the situation where the homestead exemption applicant receives the homestead by way of a certificate of transfer issued by the probate court. Such certificate is treated like a deed of transfer, conveying ownership from the decedent to the beneficiary. The main question in this scenario concerns the proper first year for which the beneficiary may file an application for the homestead exemption.

The modern rule is that the legal title to real property vests at the time of the probate of the will and relates back to the time of death of the testator, in the absence of a contrary expressed intention. Some examples will help illustrate this principle:

1. If the will specifically allows the executor to sell any real property, without permission of the probate court, a clear intention that the property would not vest upon testator's death has been expressed.

2. If the executor has an unrestricted power to sell the real property, the heirs receive only naked legal titled without a right of possession, and the property will not vest upon the testator's death.

3. If the will refers to the transfer of the property and not to the date of death, the real property transfers when the certificate of transfer is issued.

4. On the other hand, if the executor's power to sell is not absolute, but rather can only be exercised, if necessary, for the purposes of distributing the estate, then ownership in the real property will vest in the devisee upon the testator's death.

Summarizing, in the first three examples, a clear intention that the real property would not vest upon testator's death has been expressed. Consequently, in those examples, title to the real property will not relate back to the death of the testator, but will be deemed transferred when the probate court issues the certificate of transfer. In the fourth example, the executor did not have an absolute power to sell the real property. Thus, in that example, title to the real property relates back to the death of the testator.

However, the analysis does not end here. The following discussion and examples will illustrate how to apply this principle to an actual scenario, after the determination is made concerning whether the title to the homestead relates back to the testator's death or is deemed transferred when the probate court issues the certificate of transfer.

Since the probate court will not transfer the real property until all known debts of the decedent's estate are either paid, secured to be paid, or covered by sufficient other assets (R.C. 2113.61(B)(6)), even though legal title may relate back to the date of death, the devisee cannot file the homestead exemption application until the certificate of transfer is issued. If the title does not relate back to the date of death, the devisee may first file the original homestead application for the year after the year in which the certificate is issued.

On the other hand, if the title does relate back to the date of death, the devisee may file the original homestead application for the first year available after the certificate of transfer is issued and may file a late application for the preceding year, if applicable. Two examples illustrate this principle. Assume that the decedent dies in November 2012, and that the devisee of the residence under the will was living in the residence at the time of the decedent's death, continues to live there, and otherwise qualifies for the homestead exemption. If the certificate of transfer is issued in May 2014, the devisee may file the original exemption application for 2014 with a late application for 2013 by the first Monday in June 2014. If the certificate of transfer is issued in July 2014, the devisee may file the original exemption application for 2015 with a late application for 2014 by the first Monday in June 2015. The devisee cannot file a late application for 2013 because the certificate of transfer was issued after the filing deadline (the first Monday in June 2014).

Property Included in Homestead

1. Homestead - Definition

"Homestead" means a dwelling or a unit in a multiple-unit dwelling or condominium. The homestead includes the land surrounding it, not exceeding one acre, that is reasonably necessary for the use of the property as a home.

2. Dwelling - Special Situations

Garages and Condominiums

In general, the dwelling includes the garage, whether attached or detached. The same is true of condominium property, whether or not the garage is included with the condominium unit or is kept on a separate parcel.

R.C. 5311.11 states that each unit of condominium property along with its percentage of interest in the common areas is deemed to be a separate parcel for all purposes of real property taxation. Moreover, "homestead" includes a condominium unit.

Split Properties

Multiple Unit Dwellings

A dwelling, a unit in a multi-unit dwelling, or a condominium can qualify for the homestead exemption. Consequently, parcels may be split listed for homestead reduction purposes. The most common examples where only a portion of real property may qualify for the homestead exemption are: one-half of a double, one-half of a duplex, one-half of a twin-single, one-quarter of a four-plex, an apartment unit, a condo unit, a second-story apartment or loft above a store front or funeral home, a house plus one acre on a farm, and a house plus one acre on any residential site with more than one acre.

Dwellings in Structures With Other Uses

If the dwelling is in a structure that also has another use, then the dwelling must be a separate entity with separate entrances, as in the apartment above a bakery, tavern, or bookstore. A room in the print shop, for example, where the owner lives would not qualify because it is not a separate dwelling.

Manufactured or Mobile Homes

A manufactured home, as defined in R.C. 3781.06(C)(4), or a mobile home, as defined in R.C. 4501.01(O), is a dwelling for purposes of the homestead reduction. In addition, a structure consisting of two manufactured or mobile homes that were purchased either together or separately and that were combined to form one living unit is a single dwelling for purposes of the homestead reduction.

Explanation of Age, Disabled, and Surviving Spouse

1. Sixty-Five Years of Age or Older

For both real property and manufactured or mobile homes, the applicant must be at least age sixty-five by December 31 of the calendar year for which the homestead exemption is sought. For example, to qualify for tax year 2014, the applicant must be at least age sixty-five by December 31, 2014. If the applicant files a late application for 2013 along with the original application for 2014, to qualify for both years, the applicant must be at least age sixty-five by December 31, 2013.

2. Disabled

Definition

"Permanently and totally disabled" means: a person who, on January 1 of the year for which the application is filed, either (1) has some physical or mental disability that makes the person unable to work at any substantially remunerative employment which the person would be able to perform in the absence of the disability and which will be expected, with reasonable probability, to continue for an indefinite period of at least twelve months without any present indication of recovery (a physician's certificate is required for this physical or mental disability); or (2) has been certified as permanently and totally disabled by a state or federal agency having the function of so classifying persons.

Physician's Certificate

Private Physician or Psychologist

An application based on physical disability must include a certificate signed by a physician. The physician certifying physical disability is not required to be licensed in Ohio. An application based on mental disability must include a certificate signed by a physician, which includes a psychiatrist or psychologist, licensed to practice in Ohio. The certificate is on the DTE Form 105E, which must be filed with the DTE Form 105A.

Chiropractor

A chiropractor is not a "physician" for purposes of the Homestead Law. Although the homestead exemption laws do not define physician, "a 'physician' under common law was one engaged in the general practice of medicine or surgery." An individual must be licensed by the State Medical Board under O.R.C. Chapter 4731 to practice medicine or surgery in Ohio. Since a chiropractor is licensed by the State Chiropractic Examining Board under O.R.C. Chapter 4734, a chiropractor cannot practice medicine in Ohio and cannot be considered a "physician." See 1991 Ohio Atty. Gen. Op. 017.

Podiatrist

While a podiatrist is licensed under O.R.C. Chapter 5731 to practice medicine or surgery in Ohio, a podiatrist is not engaged in the "general practice of medicine or surgery." Therefore a podiatrist's certification should not be accepted.

State or Federal Agency

In General

Instead of a physician's certificate, the application may include a certificate from any state or federal agency that classifies persons as permanently and totally disabled, as defined for Ohio's homestead exemption program. Our experience is that these federal and state agencies will not use DTE Form 105E, but rather will issue disability determination letters. The following is a discussion of the standards used by three federal and six state agencies in issuing their disability determination letters, only some of which are acceptable for homestead exemption purposes.

Federal Agency

Although a form from the Social Security Administration (SSA) says that the applicant is only "disabled," that applicant should be considered permanently and totally disabled because the SSA only gives disability benefits to those who are permanently and totally disabled. This is true for the regular social security disability or the SSI disability benefits for those who are under 65 years of age. The SSA allows the disabled individuals to earn income up to certain limits and still retain their disability status. Therefore, the applicant receiving disability benefits from the SSA does not have to complete the DTE Form 105E, but can submit the SSA's disability determination letter.

The Railroad Retirement Board (RRB) offers two types of disability pensions. The member qualifies for "total and permanent disability," if the member is "unable to work in any kind of regular job." The RRB allows the disabled individuals to earn income up to certain limits and still retain their disability status. Therefore, the applicant receiving total and permanent disability benefits from the RRB does not have to complete the DTE Form 105E, but can submit the RRB's disability determination letter.

However, members who are "unable to work in [their] regular railroad job," will receive an "occupational disability" pension. Because this type of disability is job specific, it does not determine whether the member is "totally" disabled. Therefore, since the RRB does not determine whether a member is "permanently and totally disabled" as defined for homestead exemption purposes for the "occupational disability" pension, its disability determination letter for "occupational disability" will not satisfy the requirements for the homestead exemption. The applicant must, therefore, get a physician's or psychologist's signature on the certificate of disability for the homestead exemption application, DTE Form 105E. The physician's certificate may be from a physician licensed in a state other than Ohio if the disability is physical. If the disability is mental, the certifying physician or psychologist must be licensed in Ohio.

The U.S. Department of Veterans Affairs (VA) provides disability compensation for military personnel that is service connected. The VA certifies all members as "permanently and totally disabled." However, this determination does not mean that a recipient is unemployable. In general, there is no limit on the amount of revenue a disabled veteran can earn. The amount of disability compensation is based on the degree of disability. Consequently, since the VA does not determine whether a member is "permanently and totally disabled" as defined for homestead exemption purposes, a VA disability determination letter will not satisfy the requirements for the homestead exemption. The applicant must, therefore, get a physician's or psychologist's signature on the certificate of disability for the homestead exemption application, DTE Form 105E.

However, if a member is determined to have the status of "individual unemployability," the member will be paid at 100% and cannot have substantially gainful employment. Substantially gainful employment is defined as employment at which non-disabled individuals earn their livelihood with earnings comparable to the particular occupation in the community where the veteran resides. A disabled veteran with the status of "individual unemployability," is analogous to the person who is receiving disability benefits from the SSA and should be considered "permanently and totally disabled" for homestead exemption purposes. Therefore, the applicant receiving disability benefits from the VA with the status of "individual unemployability" does not have to complete the DTE Form 105E, but can submit the VA's disability determination letter.

<u>State Agency</u>

<u>Workers' compensation</u> benefits consist of four types: permanent and total disability, permanent and partial disability, temporary and total disability, and temporary and partial disability. <u>Only the determination of permanent and total disability counts for homestead exemption purposes</u>.

For purposes of the homestead exemption laws, the five state retirement systems could be considered to be state agencies. The five state retirement systems are the Public Employees Retirement System (PERS), the Police and Firemen's Disability and Pension Fund (PFDPF), the State Teachers Retirement System (STRS), the School Employees Retirement System (SERS), and the State Highway Patrol Retirement System (HPRS).

However, <u>none of the state retirement systems declare a member to be "permanently and totally disabled," as defined for homestead exemption purposes</u>. Those retirement systems do not determine their members to be totally disabled because they do not place any limits on the earnings of a disabled member.

The STRS and the PERS do not certify permanent or total disability, per se. Their disability determinations are permanent for a specific position. Since the STRS and the PERS do not determine whether a member is “permanently and totally disabled,” as defined for homestead exemption purposes, they will not complete the disability certificate on the homestead exemption application. Moreover, a STRS or a PERS disability determination letter will not satisfy the requirements for the homestead exemption. The applicant must, therefore, get a physician’s or psychologist’s signature on the certificate of disability for the homestead exemption application, DTE Form 105E.

The SERS certifies a permanent disability, but not a total disability. Since the SERS does not determine whether a member is “permanently and totally disabled,” its disability determination letter will not satisfy the requirements for the homestead exemption. The applicant must, therefore, get a physician’s or psychologist’s signature on the certificate of disability for the homestead exemption application, DTE Form 105E.

The HPRS does certify a member as “permanently and totally disabled.” It does not issue a partial disability pension. However, its determination is job specific. In other words, when the HPRS says that a trooper is “permanently and totally disabled,” it means that the trooper can no longer perform the specific duties of a trooper. Thus, a disabled trooper can be employed and retain the disability pension, as long as the new employment does not utilize the same skills that an active trooper would utilize. Therefore, since the HPRS does not determine whether a member is “permanently and totally disabled” as defined for homestead exemption purposes, its disability determination letter will not satisfy the requirements for the homestead exemption. The applicant must, therefore, get a physician’s or psychologist’s signature on the certificate of disability for the homestead exemption application, DTE Form 105E.

The PFDPF certifies members as “permanently and totally disabled” or “permanently and partially disabled.” However, its determinations are job specific. In other words, when the PFDPF says that a policeman or fireman is “permanently and totally disabled,” it means that they can no longer perform the specific duties of a policeman or fireman. Thus, a disabled policeman or fireman can be employed and retain the disability pension, as long as the new employment does not utilize the same skills that an active policeman or fireman would utilize. Therefore, since the PFDPF does not determine whether a member is “permanently and totally disabled” as defined for homestead exemption purposes, its disability determination letter will not satisfy the requirements for the homestead exemption. The applicant must, therefore, get a physician’s or psychologist’s signature on the certificate of disability for the homestead exemption application, DTE Form 105E.

3. Surviving Spouse

Definition

To be an eligible applicant for the homestead exemption as a surviving spouse, the person

-- must be the surviving spouse of a person who was permanently and totally disabled or at least age 65, and who applied and qualified for the exemption in the year of death;

-- must be at least age 59 when the deceased spouse died (if the decedent dies one day before the surviving spouse turns age 59, that survivor must wait until age 65 to qualify, unless the survivor is permanently and totally disabled);

-- cannot be age 65 or older when the deceased spouse died (although the survivor cannot qualify for the exemption as a surviving spouse, the survivor will qualify because of age); and

-- must meet all other homestead exemption requirements.

Remarriage of Surviving Spouse

Remarriage does not automatically remove the surviving spouse from eligibility. If the surviving spouse does remarry, the survivor will continue to receive the homestead exemption, as long as the survivor continues to meet all other homestead exemption requirements.

Surviving Spouse Moves

The surviving spouse is not required to remain in the same homestead. However, moving to a new residence may cause the loss of the real property homestead exemption to the surviving spouse for one year. See page 7 of this Bulletin.

Determination of Income

1. Income Limitation

Applicants who qualify for the homestead exemption the first time in 2014 will receive an exemption only if the total income does not exceed a certain threshold. This is true for those persons turning 65 in 2014 as well as those persons qualifying under the disability exemption in 2014. The statute provides for a $30,000 threshold, but the amount is adjusted for inflation by the Tax Commissioner in September of every year.[1] The threshold can increase, but it can never be less than $30,000. **This threshold applies only to applicants who apply for the first time in 2014. If an applicant has previously received the homestead reduction for 2013 (2014 for manufactured and mobile homes), that person will not be means-tested even if there is a break in the receipt of the homestead reduction. This is true even if the person moves to a new residence and applies for homestead in a later year.** The same is true for an applicant who received a homestead reduction in 2006 that was greater than the reduction computed under current law. That person will not be means-tested even if he moves from the home for which homestead was granted in 2006. Additionally, that person will continue to receive the greater of the homestead reduction received in 2006 or the amount computed under current law.

It is also important to note that there is no limit on the number of times an applicant can apply for homestead. If an applicant is denied homestead on the basis of exceeding the income threshold, the applicant can apply for any year following the year in which his income no longer exceeds the threshold. For instance, if a person turning 65 continues to work, his income may exceed the threshold. But if, when the person turns 70, he ceases employment, his income may then be below the income threshold. That person may apply for the homestead exemption in the year following the year in which income does not exceed the threshold. The applicant must continue to meet the other requirements of statute.

2. Definition of "Total Income"

"Total Income" is defined in R.C. 323.151(C) to be the Ohio Adjusted Gross Income (OAGI) of the owner and spouse for the year preceding the year in which a homestead application is made.

Generally, income is defined as all income from whatever source derived. Gross income includes wages, interest, dividends, rents, pensions, etc. Once gross income is defined, the U.S. tax code provides for certain deductions to arrive at taxable income. Ohio begins with federal taxable income and makes additional adjustments to arrive at OAGI. OAGI is found on Line 3 of the Ohio Income Tax Return.

In every year, there is a minimum below which an Ohio resident is not required to file an income tax return. For 2012, the amount is $11,700 in federal adjusted gross income if

[1] The amount for 2013 has been adjusted to $30,500.

the resident was single and had no “Schedule A” adjustments[2], and $13,400 of federal adjusted gross income if the resident was married, filing jointly, and the filers had no Schedule A adjustments. If the resident had personal exemptions equal to or greater than income and no Schedule A adjustments or the resident’s only source of income was retirement income that was eligible for the retirement income credit and the credit was the same or larger than the tax due before the credit, there is no filing requirement.

If the applicant is not required to file an income tax return for the aforementioned reasons, it follows that the applicant’s Ohio adjusted gross income is less than $30,000. However, some Ohio property owners may file regardless of the obligation to do so. In those cases, a new web-based application (explained below) will provide confirmation that the applicant meets the income qualifications for those applicants who have filed Ohio tax returns.

It will be the auditor’s responsibility to assure that applicants who have not filed an Ohio Income Tax Return are qualified to receive the homestead reduction. The auditor should consider the applicant’s income and the adjustments necessary to calculate Ohio adjusted gross income. The applicant should be asked to produce evidence of income as well as evidence of residency. Appropriate forms of evidence include federal income reporting forms, such as a W-2, Form 1099, Form SSA-1099, and Form 1099R, if applicable. The auditor should suggest that the applicant complete a current income tax return, either in paper or online, as such a return will provide the applicant with a roadmap to calculate OAGI.

While not all W-2s and Form 1099s are identical, they each provide the information necessary to calculate OAGI. The critical boxes on the W-2 form are boxes 15 through 17, which provide information regarding state-earned income. Please note what state is listed on the W-2 form. The critical boxes on the 1099 form will be boxes 1 and 2a, which provide a gross distribution and the taxable amount of such distribution. Again, please note the state information that is included in box 11. The identity of the state on the W-2 and 1099 forms may be another indication of the state of residence.

Many applicants will have only social security income. Social security income is not taxable in the state of Ohio Social Security to the extent it is included in the calculation of Federal Adjusted Gross Income. See. R.C. 5747.01(A)(5) (providing a deduction for benefits under Title II of the Social Security Act and Tier 1 railroad retirement benefits to the extent included in federal adjusted gross income under Section 86 of the Internal Revenue Code).

In addition to the website application and the worksheet, applicants who are not required to file an Ohio income tax return can always complete mock federal and state returns using the instructions accompanying such returns. The Internal Revenue Service provides such forms on its website. Currently such a form can be found at http:

[2] Schedule A adjustments include but are not limited to interest and dividends exempt from federal but not state tax and vice versa, certain pass-through entity taxes and adjustments, nonmedical withdrawals from a medical savings account, certain military pay, qualifying social security benefits and certain railroad retirement benefits, and disability and survivorship benefits included on a federal return. For a complete list of Schedule A adjustments, please obtain the most recent Ohio Income Tax Return.

//www.irs.gov/pub/irs-pdf/f1040.pdf. The state of Ohio does as well. http://www.tax.ohio.gov/Portals/0/forms/ohio_individual/individual/2012/PIT_IT1040_FI.pdf. Please note that the state's web address includes the tax year; in future years, it may be necessary to modify the provided web address. Additionally, paper returns are generally available during tax season.

3. OAGI Verification System

Beginning with applications for 2014, county auditors and up to three of their designees will be able to verify OAGI using data from state income tax returns. Disclosure of this confidential taxpayer data was made possible by recent changes in the law and to the initial application for the homestead exemption which now requires the applicant to release income information to the auditor for purposes of confirming eligibility for homestead. Auditors and their designees are bound to treat the information as personal and confidential and cannot use it for any purpose other than determining eligibility for the exemption.

The web-based application will be password protected and available only during business hours, Monday through Friday from 6:00 A.M. to 6:00 P.M. The times are subject to adjustment by the Tax Commissioner. The authorized user will enter up to two social security numbers ("SSN[s]"). The application will return the last four digits of the SSN and the last name so the user will be able to verify he is about to view income information for the correct person. If the person selected is the applicant, the user will proceed to the next screen, which will display total OAGI, the address reported on the return, the filing status, and the age of the filer as of December 31 of the current year. The auditor can use this information to assist in making a decision as to whether or not the applicant is eligible for homestead For instance, if the applicant has not disclosed the name or social security number of a spouse, but the filing status is "married filing separately," the auditor will need to ask for additional information. Likewise, if the address on the tax return is different than the address for which homestead is requested, further research will be needed. The auditor should take care when using the address on the tax return as indication of residence as the address reported is the tax-mailing address and not the home address.

In a rare number of cases, an applicant will have filed a tax return for the prior year, but no information will be available for that return through the application. Due to confidentiality agreements with the federal government, the Ohio Department of Taxation has determined that any return that requires a manual review cannot be made available. In such rare cases, it will be the auditor's responsibility to verify income, either through receipt of tax returns directly from the applicant, or by seeking proof of income from original documents such as W-2s and 1099s, as explained above. Tax transcripts are available to the filer at any time through the Department of Taxation's online services, located at the website: https://www.tax.state.oh.us/IFILE/IFileRegWeb/login.jsp . These transcripts may be used by the auditor to confirm income. However, only the individual taxpayer may obtain the transcript, as it is necessary to create a user profile and password to use the system. The filer may also obtain a Tax transcript via telephone at 1-800-282-1780.

4. Income of Multiple Owners

R.C. 323.153(C) defines "total income" to include the income of the "owner and the owner's spouse," and not just the income of the resident owner. If two owners reside in the home, the income of the applicant and the applicant's spouse should be the measuring income, not the income of both owners. Means testing is tied to the person applying for the exemption.

In addition, always use the preceding year's income of the *current* spouse on the current year's application. For example if the applicant was divorced, widowed, or not married in the preceding year, but is married in the current year at the time of application, the current spouse's income must be considered. On the other hand, if the homeowner was divorced or widowed in the preceding year and is unmarried at the time of application, do not use the preceding year's income of the former spouse on the current year's application. If a single homeowner who currently receives the homestead exemption gets married in the current year, that homeowner must disclose this information on a continuing application, and the means test must be reexamined, taking into account the new spouse's income.

NOTE: Marriage is only terminated by annulment, divorce, or dissolution. A legal separation does not terminate a marriage. Thus, if the homeowner is separated, the homeowner still has a spouse, and that spouse's income must be included on the homeowner's homestead exemption application.

5. Grandfather Provision

Certain current recipients and their surviving spouses will not be subject to means testing. If a person received homestead for tax year 2013 (2014 for manufactured or mobile homes), that person and that person's surviving spouse, as long as the surviving spouse was at least fifty-nine years of age on the date of the decedent's death and otherwise qualified for the homestead exemption, will continue to be eligible for homestead without means testing.[3] Likewise, any taxpayer who received a homestead exemption for the tax year 2006 (2007 for manufactured and mobile homes) where the tax credit calculated under the current method is less than the credit received in 2006 (2007 for manufactured and mobile homes), will also be exempt from means testing. As mentioned previously in the Bulletin, this provisions applies to the person who received homestead for the qualifying year and may be applied at any otherwise eligible property that person owns in the future.

[3] Am.Sub. H.B. 59 (130th General Assembly) did not include a provision for the surviving spouse in the grandfather close. However, Am.Sub. H.B. 72, passed _______ and effective _____ has corrected the oversight.

Ownership

To qualify for the real property homestead exemption, the applicant must own the occupied property as one of the types of owners described below. The seven types of owners listed are not exclusive. Because the homestead exemption contemplates a reduction in tax for a resident, the applicant generally must be an individual. For example, corporations, limited liability companies, or partnerships are not generally acceptable owners. However, there are exceptions to this rule.

Please note, a spouse's dower interest is not an ownership interest and does not qualify for the homestead exemption.

1. Holder of an Estate in Fee

Different types of estates in fee are the following.

A **fee simple absolute** conveys the full bundle of real property rights without condition, limitation, or restriction to particular heirs. This is the most common form of ownership. For example, the deed could say from John Doe to Jane Roe and her heirs, or to Jane Roe and her heirs and assigns, or, simply, to Jane Roe.

A **fee simple conditional** conveys property on condition that something be done or not done. For example, the deed could say from John Doe to Jane Roe on the express condition that if the land shall not be used for residential purposes, John Doe or his heirs shall have a right to re-enter and possess the land as his former estate.

A **fee simple determinable** conveys property in fee simple with a provision for automatic expiration upon the occurrence or nonoccurrence of a specified event. For example, the deed could say from John Doe to Jane Roe, as long as the land is used for residential purposes, and when the land is no longer so used, it shall revert to John Doe and his heirs.

A **fee tail** conveys property with a fixed line of inheritable succession limited either to the descendants of the grantee, in general, to the male descendants of the grantee, to the female descendants of the grantee, or to certain descendants of the grantee. For example, the deed could say from John Doe to Jane Roe and the heirs of her body, or to Jane Roe and her male descendants, or to Jane Roe and her female issue, or to Jane Roe and her first male offspring, or to Jane Roe and her first female progeny.

A **permanent leasehold estate** (a lease in perpetuity, renewable forever), which creates a type of fee simple interest in the lessee, would be eligible for the homestead exemption. This would be an exception to the general rule that the owner of property must be an individual. Property owned by an entity may qualify for homestead if a lease exists which grants to the lessee the right to live in the property for a term of years which is renewable by the lessee forever.

2. Purchaser Under Land Installment Contract

Under this form of ownership, the seller retains the deed to the property as security for payment of the contract price. The seller transfers the deed to the buyer upon payment of the final installment. After the execution of a purchase agreement or a land contract, the seller is no longer an owner for homestead exemption purposes: only the purchaser can apply for the homestead exemption.

3. Mortgagor

The mortgagor (debtor) is the one who pledges property as security for a debt or is named on the mortgage. For one to qualify as a mortgagor, the debt must be outstanding. Once the liability is paid off, the individual is no longer a mortgagor and, hence, cannot qualify for the homestead exemption. The holder of an open, equity line of credit does not qualify as a mortgagor. However, many

4. One or More Joint Tenants With Right of Survivorship

Joint tenants hold the same interest in the whole property with an equal right to the property. On the death of any joint tenant, the entire property remains with the surviving owners. This is the most common form of ownership for married couples. In this situation, only <u>one</u> joint tenant must meet the age or disability requirement.

5. Tenants in Common

Each owner holds an undivided interest in the property. The interest of an owner can be sold separately and does not end at death. In this situation, only <u>one</u> tenant in common must meet the age or disability requirement.

6. Life Tenant

A life tenant is one who holds real property, under a life estate, only during the life of the life tenant, or during some other person's life. A life estate is created by deed or by will. Two common examples of creating a life estate by deed follow. (1) Mom transfers her property to her children reserving a life estate in herself. Thus, Mom is an owner for homestead exemption purposes. (2) The children (or anyone else for that matter) could give a life estate to Mom in property they own. Thus, Mom again is an owner for homestead exemption purposes. Note: No specific words of art are necessary to create a life estate. For example, if the deed says "to B during his life," "to B until she dies, "to B for his use during his natural life," or "to B and at her death to go to B's children," B would have a life estate for his or her own life.

One could also create a life estate by will as follows: Assume Dad's will transfers the homestead to the children as remaindermen with a life estate to Mom for her life. On Dad's death, Mom becomes a life tenant and, as a result, is the owner for homestead exemption purposes.

The life tenant has complete control and possession of the property during the specified period. Since a life estate is an interest in real property created by deed, a person cannot hold a life estate in real property under a lease or hold a life estate in an item of personalty, like a manufactured or mobile home. After the creation of the life estate, the remainderman is not an owner for homestead exemption purposes: only the life tenant can apply for the homestead exemption. The remainderman is the person who takes the property on the death of the life tenant.

In general, occupancy by lease does not create an ownership interest for homestead exemption purposes, even if it is a lease for the life of the lessee. Only a permanent leasehold estate (a lease in perpetuity, renewable forever), which creates a fee simple interest in the lessee, would be eligible for the homestead exemption.

7. Settlor of a Revocable Inter Vivos or Irrevocable Trust

General Discussion

A settlor of a revocable inter vivos trust holding the title to a homestead occupied by the settlor as of right under the trust is considered an owner for homestead exemption purposes. The typical arrangement is known as a "living trust" with the deed showing a transfer of the homestead from Jane Doe to Jane Doe, Trustee. The transfer could also be from Jane Doe to ABC Bank, Trustee. The important point is that Jane Doe (settlor) is the person applying and qualifying for the homestead exemption. This point and the other key elements listed below can be verified by checking the deed and examining the trust agreement. The county auditor does not need to keep a copy of the trust, but the auditor should view the trust to determine whether the essential elements are present.

The key elements of this type of owner are explained as follows:

> The **"settlor"** of a trust is the person who establishes the trust by furnishing the assets therefor. The settlor could place the homestead in the trust by being the grantor on the deed transferring the homestead into the trust or by providing the assets to purchase the homestead that is titled in the name of the trust or the trustee. In the latter situation, the assets to purchase the homestead could come directly from the settlor or the settlor could have already placed the purchase money into the trust.
>
> An **"inter vivos"** trust is a trust created to be effective during the life of the **settlor, as opposed to a "testamentary" trust, which is created by will, or a** subtrust, contained in the living trust, which become effective upon the settlor's death.
>
> A **"revocable"** trust is one where the settlor can terminate the trust and re-acquire title to the assets placed therein. Thus, the settlor retains ultimate control over the trust assets.
>
> An **"irrevocable trust"** is one where the settler cannot terminate the trust or alter the terms of the trust.

> To occupy the home **"as of right under the trust"** simply means that the trust agreement contains a provision that the settlor has complete possession of, or control over, the home.

In other words, if the individual who owns the home places it in a revocable inter vivos trust, or otherwise provides for the home being placed into such trust, and retains possession of it pursuant to the trust agreement, then that individual is eligible for the homestead exemption as long as that individual meets the other qualifications for the exemption. The home could be placed in the trust either before or after the settlor meets the other qualifications for the homestead exemption.

Sole Grantor vs. Co-Grantors

Even though revocability of the trust is no longer a concern for homestead exemption purposes after Am. Sub. H.B. 130 (127 G.A.), the eligibility of the irrevocable trust does not mean that all trusts will automatically qualify for the homestead exemption. Consider two possible estate planning trust arrangements.

In the classic scenario, the husband, either through his will, or through a revocable inter vivos trust, sets up two trusts that spring into existence upon his death: the A Trust (marital deduction trust) and the B Trust (residuary trust). Both these trusts are irrevocable. Usually the residence and other assets necessary to meet the marital deduction amount for federal estate tax purposes are placed in the A Trust. Everything else goes into the B Trust. The wife has the use of the physical assets in the A Trust during her life and has the use of the income from both trusts during her life. Upon the death of the wife, all property typically passes to the children and grandchildren. This arrangement maximizes the estate tax deductions. When the wife applies for the homestead exemption for the residence that is in the A Trust, the application is denied for two reasons: (1) the A Trust is not an inter vivos trust, since it came into existence upon the death of the husband (sole grantor), either as a testamentary trust if he used a will, or as a subtrust if another trust was used to create the A and B Trusts upon his death; and (2) the wife is not the settlor of the A Trust. But the wife may still qualify as a trustee. See "Trustee of a Trust" below.

In the second scenario, both spouses are co-grantors (joint settlors) of a revocable or irrevocable trust. Upon the death of one of the spouses, two subtrusts are created, as before. The surviving spouse will qualify for the homestead exemption, since that subtrust is an inter vivos trust with respect to the surviving co-grantor (joint settlor).

Note: In the scenarios where the homestead is in a trust for the lifetime benefit of a surviving spouse, who was not a co-grantor (joint settler) of the trust, the trust may be able to grant a life estate to the surviving spouse by deed (depending on the trustees' powers), which would qualify the survivor for the homestead exemption on the tax lien date following the creation of the life estate. But the surviving spouse may still qualify as a trustee. See "Trustee of a Trust" below.

8. Trustee of a Trust

A trustee of a trust, in which the homestead is held, is deemed an “owner” who is eligible for the homestead exemption. *Gilman v. Hamilton County Bd. of Revision*, 127 Ohio St.3d 154, 2010-Ohio-4992 . Consequently, if the trustee is an individual and satisfies all the other conditions for eligibility, as explained in the section on “Ownership Issues,” then that trustee can receive the homestead exemption. Moreover, since a trustee holds the property in trust for the benefit of the named beneficiaries, the trustee’s powers and duties are enumerated in the trust agreement. Consequently, for a trustee to occupy the homestead held in trust, the trust agreement must provide such a power to the trustee, either directly or implicitly.

Calculation of Homestead Reduction

1. Real Property

The new homestead reduction in taxes shall equal the greater of the homestead reduction granted for tax year 2006 (using the old method with an income test), if the applicant received a homestead reduction for that year on the current homestead, or the product of the following for the current tax year (2007 and thereafter, under the new method):

$25,000 of the true value of the homestead;[4]
(a) 35% assessment percentage;
(b) Effective tax rate for the current tax year; and
(c) 1 minus the sum of the percentage reductions received for the current tax year under R.C. 319.302 (non-business credit) and R.C. 323.152(B) (owner-occupancy credit).

For an applicant who was not receiving the homestead exemption on the current homestead for tax year 2006, assume an effective tax rate for the current year of 50 mills, and assume the applicant is receiving both rollbacks for the current year, the homestead reduction will
= $25,000 (true value) x 35% (assessment rate) x 50 mills (effective tax rate) x
(1 – 0.125) (rollback adjustment)
= $25,000 x .35 x .05 x 0.875
= $8,750 x .05 x 0.875
= $437.50 x 0.875
= $382.81.[5]

For an applicant who was receiving the homestead exemption on the current homestead for tax year 2006, and assuming the same facts as above, the homestead exemption for the current year will be the greater of the reduction for 2006[6] or $382.81.

2. Manufactured or Mobile Homes

For purposes of the following examples, assume the authorized rate of taxation to be 60 mills with an effective tax rate of 50 mills.

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[4] If the homestead's true value is $25,000 or less, the net tax liability on the homestead will be zero. The difference between $25,000 and the homestead's true value cannot be used to create a negative tax liability or produce a refund. Moreover, for split properties (see page 10 of this Bulletin), if the homestead portion of the parcel has a true value of $25,000 or less, the difference between $25,000 and the homestead's true value cannot be used to offset the true value and lower the tax liability on the portion of the parcel that is not subject to the homestead exemption.
[5] This credit appears on the tax bill after the qualifying 10% and 2 ½ rollbacks are applied. Because not all levies will receive a rollback, the 10% reduction will now be known as the "non-business credit" and the 2 ½ reduction will now be known as the "owner-occupancy credit."
[6] If the county auditor discovers that the amount of the homestead reduction for tax year 2007 was calculated in error, for purposes of making this comparison, the auditor should use the amount under a correct calculation.

Homes Taxed Like Real Estate Under R.C. 4503.06(D)(2)

The calculation for the homestead exemption for manufactured or mobile homes taxed like real estate is identical to the calculation for real property with one exception. Since this new homestead exemption applies to tax years 2008 and thereafter for manufactured or mobile homes, the year to which the comparison is made for the homestead reduction received under the prior law is tax year 2007.

Homes Taxed Using the Depreciation Schedules Under R.C. 4503.06(D)(1)

The new homestead reduction in taxes shall equal the greater of the homestead reduction granted for tax year 2007 (using the old method with an income test), if the applicant received a homestead reduction for that year on the current homestead, or the product of the following for the current tax year (2008 and thereafter, under the new method):

(a) $25,000 of the cost to the owner, or the market value at the time of purchase, whichever is greater;
(b) The percentage from the appropriate depreciation schedule in R.C. 4503.06(D)(1)(b);
(c) 40% assessment percentage; and
(d) Authorized tax rate for the current tax year of the taxing district in which the home has its situs.

For an applicant who was not receiving the homestead exemption on the current homestead for tax year 2007, assume that the home was purchased unfurnished at least ten years ago, the homestead reduction will
= $25,000 (cost) x 50% (depreciation) x 40% (assessment rate) x 60 mills (authorized tax rate)
= $25,000 x .50 x .40 x .06
= $12,500 x .40 x .06
= $5,000 x .06
= $300.00.

For an applicant who was receiving the homestead exemption on the current homestead for tax year 2007, and assuming the same facts as above, the homestead exemption for the current year will be the greater of the reduction for 2007[7] or $300.00.

Home on Land Owned by Another Person

For either method of taxation, taxed like real estate or taxed using the depreciation schedules, if the home's true value or cost is $25,000 or less, the net tax liability will be zero. The difference between $25,000 and the home's true value or cost cannot be used to create a negative tax liability or produce a refund.

[7] If the county auditor discovers that the amount of the homestead reduction for tax year 2007 as calculated in error, for purposes of making this comparison, the auditor should use the amount under a correct calculation.

Home and Land Owned by Same Person

The homestead reduction on the land is calculated first. Any remaining reduction is applied to the manufactured or mobile home up to the available maximum. Only <u>**one**</u> $25,000 maximum reduction is allowed for both land and home.

<u>**Example 1**</u>**: Total Reduction Applied Only to Land**

If the true value of the land is $25,000 or greater, all of the homestead reduction will go to the land. Since the land absorbed the maximum homestead reduction in this example, the manufactured or mobile home gets no reduction. Consequently, the total tax savings, calculated under the real property method above, appears on the real property tax bill.

<u>**Example 2**</u>**: Total Reduction for Land and Home is Less Than Maximum**

Assume the following additional facts: the true value of the land is $5,000; and the true value or cost (depending on the method of taxation: like real or depreciation schedule) of the manufactured or mobile home is $15,000.

Since the total value of land and home is less than the $25,000 maximum allowed, the taxes on both land and home are reduced to zero by the homestead exemption.

<u>**Example 3**</u>**: Total Reduction for Land and Home Exceeds Maximum**

Assume the following additional facts: the true value of the land is $10,000; and the true value or cost (depending on the method of taxation: like real or depreciation schedule) of the manufactured or mobile home is $45,000.

Since the homestead reduction on the land is calculated first, $10,000 of the maximum $25,000 value reduction is applied to the land and the taxes on the land are reduced to zero. The difference between the $25,000 maximum allowed value reduction and the value of the land is applied to the manufactured or mobile home. Thus, $15,000 is used to calculate the homestead reduction on the home, using the appropriate method of taxation depending on whether the home is taxed like real estate or taxed using the depreciation schedules.

NOTE: The Proper Years to Combine

When calculating the manufactured home, homestead reduction under R.C. § 4503.065, use the homestead reduction on the real estate allowed under R.C. 323.152(A) <u>for</u> the year <u>in which</u> the manufactured home, homestead application is filed. For example, to allocate the reduction between land and home, combine the real estate application for 2013 with the manufactured home application for 2014, both filed in 2013. Correspondingly, combine a late real estate application for 2013 with a late manufactured home application for 2014, both filed in 2014.

Two Homes Attached

Assume an owner of a manufactured or mobile home purchases another one and connects the two together to form one larger home. Since each unit bears its own serial number and certificate of title, the taxpayer will have two manufactured or mobile homes on the tax list and will receive two tax bills.

A homeowner can only receive the homestead exemption on one dwelling. However, the two connected manufactured or mobile homes are in reality one dwelling. This situation is similar to constructing a new room or adding a new wing to a house. The whole house with the addition would be subject to the homestead exemption. The same result is true for two connected manufactured or mobile homes.

In this situation, compute the homestead reduction on the manufactured or mobile homes as above, by utilizing the total true value or cost (depending on the method of taxation: like real or depreciation schedule) of all units that make up the dwelling. Then, apportion the maximum $25,000 value reduction to all units on the manufactured home tax list based on their relative values.

Housing Cooperative

1. Definitions

Homestead

A "homestead" includes a unit in a housing cooperative that is occupied as a home, but not owned, by an individual whose domicile is in Ohio.

Housing Cooperative

A qualifying "housing cooperative" is a housing complex with at least two units that is owned and operated by a nonprofit corporation that (1) issues a share of the corporation's stock to an individual, entitling the individual to live in a unit of the complex, and (2) collects a monthly maintenance fee from the individual to maintain, operate, and pay the taxes of the complex.

Applicant

The "applicant" is the person who occupies a homestead in a housing cooperative.

2. Filing Procedures

Although the occupier of a unit in a housing cooperative must meet the same age or disability requirements as other applicants, the filing procedures differ from those used by owner-occupiers of a homestead.

By March 1 – The corporation must obtain applications from the county auditor and provide one to each new occupant. DTE Forms 105A and 105A-Supplement are prescribed for this purpose. An applicant's filing based on disability must include a physician's certificate or a statement from a federal or state agency. See pages 12-15 of this Bulletin.

By May 1 – The occupant must submit the completed application to the corporation.

By May 15 – The corporation must file all completed applications and the information required by R.C. § 323.159(B) (explained later) with the county auditor.

During January – The county auditor will furnish by ordinary mail a continuing application to each person issued a certificate of reduction under R.C. § 323.159 for the preceding year. The continuing application must be returned to the county auditor by the first Monday in June.

3. Determining the Homestead Exemption Benefit

Corporation's Duties

By May 1 – The corporation must determine the amount of real property taxes it paid for the housing cooperative for the preceding tax year and attribute to each unit in the cooperative, for which an application is received, a portion of the total taxes. The apportionment shall be based on the percentage that the square footage of the unit is of the total square footage of the housing cooperative and on other reasonable factors that reflect the value of the unit.

By May 15 – The corporation must file with the county auditor the applications submitted to it by the occupants and a table containing a list of their units with the taxes attributed to each such unit and the total taxes paid for the housing cooperative. To avoid listing each unit separately, units of the same value can be grouped together showing the taxes attributed to each unit in that group.

County Auditor's Duties

The county auditor must evaluate the homestead exemption applications for the age or disability and income criteria, as usual.

Approved Applications

When an original application is approved, the auditor shall so notify the applicant and the nonprofit corporation that owns and operates the housing cooperative by the first Monday in October. DTE Form 105F is prescribed for this purpose.

The county auditor will calculate the taxable value of each qualifying applicant's homestead, using the information provided by the corporation, and determine the reduction in taxable value to be attributed to the homestead. In other words, from the table presented by the corporation, the auditor must calculate the percentage that the qualifying unit's attributed taxes bears to the total taxes reported by the corporation and apply that percentage to the total taxable value of the housing cooperative for the current year to determine the taxable value of the qualifying unit. Then, the auditor can calculate the reduction in taxable value and the corresponding reduction in taxes for the current year that relate to the qualifying unit.

Denied Applications

If an application, late application, or continuing application is not approved, or if the county auditor otherwise determines that a unit in the housing cooperative does not qualify for the homestead reduction under R.C. 323.152(A), the auditor must issue a certificate of denial, DTE Form 106A, to the applicant **and** to the corporation that owns the housing cooperative by the first Monday in October.

If the applicant believes that the application has been improperly denied, or the corporation believes that the reduction is less than that to which the housing cooperative is entitled, the applicant **or** corporation may file an appeal on DTE Form 106B with the county board of revision by the last date that real property taxes may be paid without penalty for the following first half collection.

4. Applying the Homestead Exemption Benefit

County Auditor's Duties

The county auditor must, annually, issue a notification to the nonprofit corporation that owns and operates the housing cooperative, showing the total taxable value of the housing cooperative, the taxable value of each qualifying homestead, the reduction in taxable value and reduction in taxes attributed to each qualifying homestead, the total reduction in taxable value and the total reduction in taxes for the housing cooperative based on all the applications approved, and the tax rate used to calculate the reductions in taxes. DTE Form 106E is prescribed for this purpose. The auditor will record the amount of reduction in total taxes on the tax list and duplicate of real and public utility property to the credit of the housing cooperative.

County Treasurer's Duties

The county treasurer shall show the reduction as a credit on the tax bill of the corporation that owns the housing cooperative.

Corporation's Duties

On receipt of the county auditor's notification, the corporation must reduce the monthly maintenance fee for each qualifying homestead for the year following the year for which the application was approved. The reduction in the monthly fee shall equal 1/12 of the reduction in taxes attributed to the homestead by the county auditor.

Corrective Measures and Penalties

1. Improperly Granted Exemptions

Clerical Errors

Real Property and Housing Cooperatives

If the county auditor discovers that taxes were erroneously charged in the calculation of the homestead reduction, as a result of a clerical error defined in R.C. 319.35, the auditor with the approval of the county board of revision shall remove the erroneous charges from the tax list and refund those charges that have been collected, with interest, as prescribed in R.C. 319.36 for the preceding five years.

If the county auditor discovers that taxes were omitted as a result of a clerical error in the calculation of the homestead reduction resulting in a lower tax liability than would otherwise be allowed under a correct calculation, the auditor, on the auditor's own motion, shall correct the current year's tax list and charge the omitted taxes, without interest, as prescribed in R.C. 319.40 for the preceding five years.

Manufactured or Mobile Homes

If the county auditor discovers that taxes were erroneously charged as a result of a clerical error, as defined in R.C. 319.35, in the calculation of the homestead reduction, the auditor with the approval of the county board of revision shall remove the erroneous charges from the tax list and refund those charges that have been collected, with interest, as prescribed in R.C. 319.36 for the preceding five years.

If the county auditor discovers that taxes were omitted as a result of a clerical error in the calculation of the homestead reduction resulting in a lower tax liability than would otherwise be allowed under a correct calculation, the auditor may not charge the omitted taxes because R.C. 319.40 only applies to real property, and no other section exists that allows the auditor to charge omitted manufactured home taxes occurring as a result of a county clerical error.

Fundamental Errors

If the county auditor discovers that the homestead reduction was granted in error as a result of a misunderstanding of the basic eligibility requirements, as expressed in this Bulletin, the auditor shall remove the reduction from the tax list for the current year. No provision exists to allow a recoupment of prior years' reductions. Note: the applicant can appeal the denial for the current year to the county board of revision and apply again for the following year.

2. Failure to Notify and False Statements

Real Property and Housing Cooperatives

If the applicant knowingly makes a false statement on any homestead exemption application or fails to notify the county auditor of any changes in the information previously reported to the auditor affecting the applicant's eligibility for the homestead exemption, the applicant is guilty of a fourth degree misdemeanor under R.C. 323.99. Moreover, if the county obtains a conviction against an applicant for making such a false statement or failing to notify the auditor, the applicant is barred from receiving the homestead exemption reduction for a period of three years following the conviction under R.C. 323.152(E).

If a person knowingly makes a false statement or certification attesting to an individual applicant's physical or mental disability for purposes of qualifying such applicant for the homestead exemption, the person making such statement or certification is guilty of a fourth degree misdemeanor under R.C. 323.99.

If the nonprofit corporation that owns and operates a housing cooperative fails to provide the county auditor the information required by R.C. 323.159(B), the offending party is guilty of a fourth degree misdemeanor under R.C. 323.99.

The sentence upon an offender for a fourth degree misdemeanor can result in a jail term, not exceeding 30 days, under R.C. 2929.24(A)(4) and a fine, not exceeding $250, under R.C. 2929.28(A)(2)(a)(iv).

Manufactured or Mobile Homes

If the applicant knowingly makes a false statement on any homestead exemption application or fails to notify the county auditor of any changes in the information previously reported to the auditor affecting the applicant's eligibility for the homestead exemption, the applicant is guilty of a fourth degree misdemeanor under R.C. 4503.066(F). Moreover, if the county obtains a conviction against an applicant for making such a false statement or failing to notify the auditor, the applicant is barred from receiving the homestead exemption reduction for a period of three years following the conviction under R.C. 4503.065(D).

If a person knowingly makes a false statement or certification attesting to an individual applicant's physical or mental disability for purposes of qualifying such applicant for the homestead exemption, the person making such statement or certification is guilty of a fourth degree misdemeanor under R.C. 4503.066(F).

The sentence upon an offender for a fourth degree misdemeanor can result in a jail term, not exceeding 30 days, under R.C. 2929.24(A)(4) and a fine, not exceeding $250, under R.C. 2929.28(A)(2)(a)(iv).

APPENDIX A --
REVISED CODE STATUTES

Real Property

1. R.C. § 323.151 – Homestead Definitions
2. R.C. § 323.152 – Reduction in Taxable Value
3. R.C. § 323.153 – Application for Reduction
4. R.C. § 323.154 – Certificate of Reduction
5. R.C. § 323.155 – County Treasurer Actions
6. R.C. § 323.156 – Reimbursements from the State's General Revenue Fund
7. R.C. § 323.157 – County Employees
8. R.C. § 323.159 – Housing Cooperatives
9. R.C. § 323.99 – Penalties

Manufactured and Mobile Homes

1. R.C. § 4503.06 – The Manufactured Home Tax
2. R.C. § 4503.064 – Homestead Definitions
3. R.C. § 4503.065 – Reduction in Taxable Value
4. R.C. § 4503.066 – Application for Reduction
5. R.C. § 4503.067 – Certificate of Reduction
6. R.C. § 4503.068 – Reimbursements from the State's General Revenue Fund
7. R.C. § 4503.069 – County Employees

Web Site

http://codes.ohio.gov/orc/

APPENDIX B --
DTE FORMS

For Both Real Property and Manufactured and Mobile Homes

1. DTE Form 105A – Homestead Exemption Application for Senior Citizens, Disabled Persons, and Surviving Spouses, and Instructions.

2. DTE Form 105A, Supplement – Special Instructions for Housing Cooperative Property Only

3. DTE Form 105B – Continuing Homestead Exemption Application Form for Senior Citizens, Disabled Persons, and Surviving Spouses

4. DTE Form 105E – Certificate of Disability for the Homestead Exemption

5. DTE Form 105F – Homestead Exemption and 2½ % Reduction Certificate of Approval

6. DTE Form 105G – Application of Continuing Homestead Exemption/Residence Change

7. DTE Form 106A – Homestead Exemption and 2.5% Reduction Certificate of Denial

8. DTE Form 106B – Homestead Exemption and 2.5% Reduction Complaint

9. DTE Form 106C – Certification of Reduction for Homestead Exemption for Senior Citizens, Disabled Persons and Surviving Spouses

10. DTE Form 106E – Certificate of Reduction for Homestead Exemption for Senior Citizens, Disabled Persons, and Surviving Spouses Occupying a Unit in a Housing Cooperative

Web Site

http://www.tax.ohio.gov/Forms.

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YEAR OF SEXENNIAL REAPPRAISAL AND TRIENNIAL UPDATE
FOR OHIO'S 88 COUNTIES
2014 - 2019

2014
REAPPRAISAL
COUNTIES

ASHLAND
ASHTABULA
ATHENS
BUTLER
CLERMONT
FULTON
GREENE
KNOX
MADISON
MONTGOMERY
NOBLE
SUMMIT
WAYNE

2014
UPDATE
COUNTIES

AUGLAIZE
CLINTON
DARKE
DEFIANCE
DELAWARE
FRANKLIN
GALLIA
GEAUGA
HAMILTON
HARDIN
HARRISON
HENRY
JACKSON
LICKING
MAHONING
MERCER
MORROW
PERRY
PICKAWAY
PIKE
PREBLE
PUTNAM
RICHLAND
SENECA
SHELBY
TRUMBULL
VANWERT
WOOD

2015
REAPPRAISAL
COUNTIES

ALLEN
COSHOCTON
GUERNSEY
SANDUSKY
VINTON

2015
UPDATE
COUNTIES

BELMONT
BROWN
CRAWFORD
CUYAHOGA
ERIE
FAYETTE
HIGHLAND
HURON
JEFFERSON
LAKE
LORAIN
LUCAS
MORGAN
MUSKINGUM
OTTAWA
PORTAGE
STARK
WARREN
WILLIAMS

2016
REAPPRAISAL
COUNTIES

ADAMS
COLUMBIANA
HANCOCK
HOCKING
HOLMES
LAWRENCE
MEIGS
MONROE
PAULDING
SCIOTO
TUSCARAWAS
WASHINGTON

2016
UPDATE
COUNTIES

CARROLL
CHAMPAIGN
CLARK
FAIRFIELD
LOGAN
MARION
MEDINA
MIAMI
ROSS
UNION
WYANDOT

2017
REAPPRAISAL
COUNTIES

AUGLAIZE
CLINTON
DARKE
DEFIANCE
DELAWARE
FRANKLIN
GALLIA
GEAUGA
HAMILTON
HARDIN
HARRISON
HENRY
JACKSON
LICKING
MAHONING
MERCER
MORROW
PERRY
PICKAWAY
PIKE
PREBLE
PUTNAM
RICHLAND
SENECA
SHELBY
TRUMBULL
VANWERT
WOOD

2017
UPDATE
COUNTIES

ASHLAND
ASHTABULA
ATHENS
BUTLER
CLERMONT
FULTON
GREENE
KNOX
MADISON
MONTGOMERY
NOBLE
SUMMIT
WAYNE

2018
REAPPRAISAL
COUNTIES

BELMONT
BROWN
CRAWFORD
CUYAHOGA
ERIE
FAYETTE
HIGHLAND
HURON
JEFFERSON
LAKE
LORAIN
LUCAS
MORGAN
MUSKINGUM
OTTAWA
PORTAGE
STARK
WARREN
WILLIAMS

2018
UPDATE
COUNTIES

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COSHOCTON
GUERNSEY
SANDUSKY
VINTON

2019
REAPPRAISAL
COUNTIES

CARROLL
CHAMPAIGN
CLARK
FAIRFIELD
LOGAN
MARION
MEDINA
MIAMI
ROSS
UNION
WYANDOT

2019
UPDATE
COUNTIES

ADAMS
COLUMBIANA
HANCOCK
HOCKING
HOLMES
LAWRENCE
MEIGS
MONROE
PAULDING
SCIOTO
TUSCARAWAS
WASHINGTON