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TO: All County Auditors and Treasurers
Through: Shelley Wilson, Administrator, Tax Equalization Division
FROM: Edward C. Samsel, Legal Counsel for the Tax Equalization Division
RE: Tax Payment Extension for Military Personnel
DATE: July 10, 2003

Introduction

Substitute Senate Bill No. 47 (SB 47), effective June 12, 2003, was enacted by the 125th General Assembly to extend the time within which certain military personnel must pay real property and manufactured home taxes. This bill amends Section 5 of Substitute House Bill No. 390 (HB 390), effective March 4, 2002, which was enacted by the 124th General Assembly, and places the amended provisions in new section 323.122.

Section 5 of HB 390 allows members of the National Guard and reserve components of the U.S. Armed Forces to defer payment of property taxes on real property and manufactured and mobile homes that they own until the seventh month after their tour of duty, under Operation Enduring Freedom, Operation Noble Eagle, or the directive issued by the Governor on September 28, 2001, or a successor to that directive, has terminated.

New section 323.122 of SB 47 removes the reference to the two Operations and the Governor's directives that are contained in Section 5 of HB 390 and makes some procedural changes. Consequently, under SB 47, members of the National Guard or reserve components of the U.S. Armed Forces can take advantage of this property tax deferral, when they are called to active duty for any reason.

Tax Payment Extension for Military Personnel

Eligible Applicants

Section 323.122 provides for an extension of time to pay real property and manufactured home taxes assessed against any real property or manufactured or mobile home that is:

1. owned by a member of the National Guard or a member of a reserve component of the Armed Forces of the United States who is called to active duty;
2. owned by the spouse of a such a member;
3. owned jointly by such a member and that member's spouse or dependent parent; or
4. owned by the dependent parent of such a member who dies during such duty or as a result of wounds or illness incurred during such duty.

“Dependent parent” – means “a parent who, at the time the member was activated, received from the member at least half of the dependent parent’s support, including food, shelter, clothing, and medical and dental care.”

“Active duty” - means the same as in R.C. § 5919.34(F). Under that section, “active duty” means active duty pursuant to an executive order of the U.S. President, an act of the U.S. Congress, or section 5919.29 or 5923.21 of the Revised Code. Sections 5919.29 and 5923.21 refer to the Governor’s power to call up the National Guard to active duty.

Qualification Process

1. The member, member’s spouse, or the member’s dependent parent must apply to the county treasurer for an extension for the payment of taxes and assessments charged against any real property or manufactured or mobile home and payable during the period that starts when the member’s duty service begins and ends six months after termination of duty. Added by SB 47, application with the county treasurer may be made on behalf of the member by a person holding a power of attorney granted by the member. The applicant may apply in any manner or format acceptable to the treasurer: for example, by letter or by a special form created by the treasurer for this purpose.
2. The application must be made not later than the last day of the sixth month after the month in which the member’s duty terminates. For example, if the member’s duty terminates on October 20, 2003, then the application must be filed on or before April 30, 2004.
3. The applicant must provide evidence satisfactory to the county treasurer that demonstrates eligibility for the extension. That information should include the dates the duty service began and was terminated (if known at time of applying). The reservists will receive call-up orders for their operations, which will show when active duty began. They will also receive recall orders at the end of their tour of duty. If these orders have been misplaced, the reservist can ask his unit to write a letter on his behalf, detailing the information requested. The National Guard units should be able to provide similar documentation for these activities.

Result of Qualification

1. If the county treasurer determines that the applicant qualifies for the extension, the treasurer shall enter into a contract with the applicant to pay taxes and assessments in installments under the same terms and conditions used for delinquent tax contracts under R.C. § 323.31, **except** that the contract must specify that the payments shall begin in the seventh month after the member’s duty terminates.
2. Taxes and assessments, whose payments have been extended under these provisions, do not constitute delinquent taxes and shall not be placed on the delinquent land list or delinquent manufactured home tax list, **unless** the contract becomes void and a new contract is not entered into pursuant to R.C. § 323.31. In other words, once the contract is signed, the county may not institute foreclosure proceedings against the property for delinquent taxes that were charged during the period of the member’s tour of duty and six months thereafter, even if they were placed on a delinquent list before the contract was signed.

3. If the contract is entered into before the first day of the seventh month after the month in which the member's duty terminates, the county auditor and treasurer must remove from the tax list and duplicate any penalties and interest that were charged under R.C. §§ 323.121 and 4503.06 during the member's duty and before the first day of the seventh month after the month in which the member's duty terminates.
4. If the payment of taxes and assessments are extended under these provisions, the applicant is not required to pay those taxes to the applicant's escrow agent during the period for which payment is extended. If such taxes or assessments are paid as part of a mortgage loan installment payment, the escrow agent must deduct the portion of the payment that represents such taxes and assessments from the amount of each such mortgage payment during the period of the extension. We suggest that the county treasurer send notice of the approved extension application and contract to the escrow agent with an explanation that no taxes are currently due on that property.

Treasurer Notice

Each county treasurer must include a notice of, and information about, the extension allowed under these provisions with tax bills mailed or delivered under R.C. § 323.13 or § 4503.06. **Alternatively**, added by SB 47, the treasurer may provide notice of this military extension in a newspaper of general circulation in the county when the tax bills are mailed or delivered. The notice must be included with all tax bills, including the delinquent tax bills that are mailed after the delivery of the delinquent land duplicate or the delinquent manufactured home tax list. This new tax bill or newspaper notice constitutes a permanent notice requirement. NOTE: SB 47 explicitly provides that this notice can be sent with the tax bill without the approval of the Tax Commissioner.