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**THE HOMESTEAD EXEMPTION FOR THE AGED, DISABLED,
VETERANS WITH SERVICE-CONNECTED DISABILITIES,
AND SURVIVING SPOUSES**

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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. Procedural differences do 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. An additional 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 upon issuance of this Bulletin 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 Bulletin revised in February 2016. Effective October 17, 2019, Am. Sub. H.B. 166 became effective, changing the income threshold to qualify for the homestead exemption from "Ohio Adjusted Gross Income" to "modified adjusted gross income," as defined in R.C. 5747.01(JJ). "Modified adjusted gross income" consists of the Ohio adjusted gross income plus any deducted business income from line 11 of Ohio Schedule A. The change applies to the homestead exemption beginning tax year 2020 for real property and tax year 2021 for manufactured homes.

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 on or before December 31st of the year for which the application is filed. “Filed” means received by the auditor’s office, not postmarked by the due date. That means the filing period for tax year 2017 is from January 1, 2017, to and including December 31, 2017. 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. An applicant filing for the enhanced veteran’s exemption must use DTE Form 105I and include documentation from the Department of Veterans Affairs (VA). See pages 16-17 of this Bulletin.

There are several instances when an applicant is required to provide additional information, either by presenting additional documentation or by completing a required form. The application is timely if the DTE Form 105A is filed timely. The additional forms or documentation should be submitted with the application. However, such information may be submitted after the close of the application period.

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 or DTE Form 105I that is filed for the original application. For example, a late application for tax year 2018 may be filed along with the original application for tax year 2019 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 that was previously reported to the auditor that affects the applicant’s eligibility for the exemption. The applicant must return this form by December 31 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, 130th General Assembly, does not apply to any person who received the exemption for 2013, nor does the income threshold apply to any veteran who qualifies for the enhanced exemption. However, if the applicant was required to meet the income threshold when originally

applying for homestead for 2014 or thereafter, then the applicant must report any changes in income on the DTE Form 105B.

Additionally, a veteran's service-connected disability status may change. A veteran's service-connected disability or combination of disabilities is rated, as is the likelihood that that a disability may improve. If a veteran is notified of a change to the rating(s) of the disability or combination of disabilities or the rate of compensation therefor, that change must be reported on the DTE Form 105B.

Continuing Application/Change in Residency

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. The auditor is hereby instructed to send the DTE Form 105F upon approval of applications filed after the first Monday in October.

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 2016, or a late application for tax year 2015, is denied by the county auditor, the auditor notifies the applicant by October

3, 2016. Note that with the extension of the filing deadline to December 31st for real property, the auditor will continue to receive and perhaps deny applications after the notification date. The auditor is hereby instructed to send the DTE Form 106A upon denial of applications filed after the first Monday in October.

If the applicant believes that the application was improperly denied, 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.

A county board of revision will hear an appeal from a homestead applicant at the same time and in the same manner as challenges to value. The board of revision's decision can also be appealed, either to the local Court of Common Pleas, or to the Ohio Board of Tax Appeals.

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 December 31st 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 2020, the filing deadline is December 31, 2019. 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. An applicant filing for the enhanced veteran's exemption must use DTE Form 105I and include documentation from the VA. See pages 16-17 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 or the DTE Form 105I that is filed for the original application. For example, a late application for tax year 2019 may be filed along with the original application for tax year 2020 by December 31, 2019. 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 December 31st 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, 130th General Assembly, 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 for 2015 or thereafter. Additionally, a veteran's disability status may change. A veteran's service-connected disability or combination of disabilities is rated, as is the likelihood that a disability may improve. See page 16 of this Bulletin. If a veteran is notified of a change to the rating(s) of the disability or combination of disabilities or the rate of compensation therefor, that change must be reported 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 Form 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. The auditor is hereby instructed to send the DTE Form 105F upon approval of applications filed after the first Monday in October.

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 2019, or a late application for tax year 2018, is denied by the county auditor, the auditor notifies the applicant by October 7, 2019. With the extension of the filing deadline to December 31st for manufactured homes, the auditor will continue to receive and perhaps deny applications after the notification date. The auditor is hereby instructed to send the DTE Form 106A upon denial of applications filed after the first Monday in October.

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.

A county board of revision will hear an appeal from a homestead applicant at the same time and in the same manner as challenges to value. The board of revision’s decision can also be appealed, either to the local Court of Common Pleas, or to the Ohio Board of Tax Appeals.

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 33-35 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 non-filing 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 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 title 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 [see 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 2015, 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 2017, the devisee may file the original exemption application for 2017 with a late application for 2016 by December 31, 2017. If the certificate of transfer is issued in January 2018, the devisee may file the original exemption application for 2018 with a late application for 2017/2016 by December 31, 2018. The devisee cannot file a late application for 2016 because the certificate of transfer was issued after the filing deadline (December 31, 2017, as a late application).

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, even if 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, Veteran with Service-Connected Disability, 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 2016, the applicant must be at least age sixty-five by December 31, 2016. If the applicant files a late application for 2015 along with the original application for 2016, to qualify for both years, the applicant must be at least age sixty-five by December 31, 2015.

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.

Certified Nurse Practitioner

A nurse practitioner’s signature is not sufficient under Ohio law. Under R.C. 323.153(A)(1), the homestead disability certificate must be “signed by a physician or psychologist licensed to practice in this state[.]” A “physician” under common law was “one engaged in the general practice of medicine or surgery” and an individual must be licensed by the State Medical Board under R.C. Chapter 4731 to practice medicine or surgery in Ohio. See 1991 Ohio Atty. Gen. Op. 017. Nurse Practitioners are licensed under R.C. Chapter 4723 and under R.C. 4723.151(A), are prohibited from “[m]edical diagnosis, prescription of medical measures, and the *practice of medicine or surgery* or any of its branches[.]” (Emphasis added).

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. Experience indicates 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 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 under the standard disability provision. 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.

Please note that a veteran who was discharged from active duty under honorable conditions and who has been rated with a 100 percent, service-connected disability or who is receiving compensation at 100% for a service-connected disability following a determination of individual unemployability is now entitled to an enhanced exemption. See pages 16 - 17 of this Bulletin.

State Agency

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

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). While for

purposes of the homestead exemption laws, the five state retirement systems could be considered state agencies, none of the state retirement systems declare a member to be “permanently and totally disabled,” as defined for homestead exemption purposes. 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.

STRS and the PERS do not certify permanent or total disability, per se. Instead, their disability determinations relate to specific positions. Since STRS and PERS do not determine whether a member is “permanently and totally disabled,” as defined for homestead exemption purposes, the agencies 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. A physician or psychologist must sign 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, if 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, if 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. **Disabled Veteran – Enhanced Exemption**

Discussion.

Am. Sub. House Bill 85, 130th General Assembly, created an additional classification of recipient for the homestead exemption and that recipient was granted an increased reduction. Am Senate Bill 10, 131st General Assembly, has extended that increased reduction to another group of disabled veterans. Through these Acts disabled veterans who meet certain criteria and qualifying spouses are entitled to a homestead reduction in taxes equal to the taxes on \$50,000 of true value (as opposed to the traditional homestead reduction of taxes equal to the taxes of \$25,000 of true value), without being subject to any income limits.

Am. Senate Bill 10 modifies the definition of “disabled veteran” in R.C. 323.151(F) which identifies the disabled veterans who are eligible for the expanded exemption. Under the changes to that definition a “disabled veteran” is defined as a person who is a veteran of the armed forces of the United States (including the reserve components or the national guard) who was discharged under honorable conditions and who has either 1) received a total (100%) disability rating for service-connected disabilities or 2) received a total (100%) disability rating for compensation for service-connected disabilities based on a determination of individual unemployability.

To qualify, the disabled veteran must provide a copy of his or her Department of Defense Form 214, commonly known as the DD214. Every veteran who served on active duty will have been given a DD214, even if the veteran began service as a reservist or guardsman. The DD214 will also list the conditions under which the veteran was discharged. To be eligible for the expanded exemption, that discharge must have been under honorable conditions. The most common form will be the honorable discharge and the general discharge under honorable conditions, but any form of release from active duty under honorable conditions satisfies this requirement.

The Department of Veterans Affairs (“VA”) issues two types of disability ratings: the level of disability and the level of compensation. Following passage of Senate Bill 10 veterans with a total disability rating in either category can qualify for the expanded exemption, after satisfying the active duty and discharge requirements.

Veterans who apply under the total disability provision will need to provide a copy of the VA award letter that assigns the disability rating at the 100% level. Veterans who apply under the compensation provision must provide a copy of the award letter granting them total compensation at the 100% level and a copy of the finding that the veterans’ application for “individual unemployability” (often referred to as “IU”) has been granted. Individual Unemployability is VA designation that recognizes veterans have suffered significant if not total disabilities.

DTE Form 105I has been created for applications for disabled veterans. Note: income information is not required for disabled veterans (and their spouses).

Enhanced Exemption for Veterans Owning Manufactured or Mobile Homes

A corresponding change has been made to the homestead reduction allowed against taxes charged for manufactured and mobile homes. R.C. 4503.064(B) has been modified to remove a “disabled veteran” from the definition of “permanently and totally disabled.” Under R.C. 4503.064(G), “disabled veteran” has the same meaning as R.C. 323.151. Under R.C. 4503.065(B)(A), the tax levied on a manufactured or mobile home owned and occupied by a disabled veteran shall be reduced by the amount of tax equal to \$50,000 reduction from value. There is also an allowance for the surviving spouse who occupied the home when the disabled veteran died and who acquires ownership of a homestead that qualifies for the reduction in the year of the veteran’s death.

A manufactured or mobile home’s owner must also produce a letter or other written confirmation from the VA showing that the veteran qualifies as a disabled veteran.

4. Surviving Spouse (Excluding Enhanced Veteran’s Homestead Exemption)

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 exemption to the surviving spouse for one year since the surviving spouse will not have lived in the new home January 1 of the year in which the spouse moves.

5. **Surviving Spouse (Enhanced Veteran's Homestead Exemption)**

Definition

To be eligible for the Enhanced Veteran's homestead exemption as a surviving spouse, the person

-- must be the surviving spouse of a person who applied for and qualified under the enhanced, service-connected Disabled Veteran's homestead exemption in the year of death. There is no age requirement.

-- must be living in the home receiving the homestead at the time of the disabled veteran's death; must be an owner of the home or acquire ownership of the property. Ownership is not a requirement if the home is a unit in a housing cooperative.

-- must meet all other homestead exemption requirements.

Remarriage of Surviving Spouse

The surviving spouse of a service-connected disabled veteran will receive the exemption only until the spouse remarries or dies. The surviving spouse who remarries will lose the enhanced exemption even if the surviving spouse continues to live in the home for which the enhanced exemption was granted. This contrasts with the traditional homestead exemption, which remains applicable even if the spouse remarries, as long as the surviving spouse meets the other homestead requirements.

Surviving Spouse Moves

The surviving spouse of a service-connected disabled veteran is not required to remain in the same homestead. However, moving to a new residence may cause the loss of the exemption to the surviving spouse for one year since the surviving spouse will not have lived in the new home January 1 of the year in which the spouse moves.

Determination of Income

1. Income Limitation

Except for the applicants under the enhanced homestead for service-connected disabled veterans and their surviving spouses, applicants who qualify for the homestead exemption the first time in or after 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 or after 2014 as well as those persons qualifying under the disability exemption in or after 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. The threshold can increase, but it can never be less than the amount most recently certified. **This threshold applies only to applicants who apply for the first time in or after 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. Definitions of Income

For Tax Year 2020 and subsequent years:

Beginning tax year 2020 for real property and beginning tax year 2021 for manufactured homes, eligibility for the homestead exemption will be based on the previous year's "modified adjusted gross income" ("MAGI"), as defined in R.C. 5747.01(JJ), of the owner and spouse for the year preceding the year for which a homestead application is made. MAGI is essentially OAGI plus business income that has been deducted in computing OAGI on line 11 of Ohio Schedule A. This income must be included in the income calculation used to qualify for the homestead exemption for tax year 2020 (2021 for manufactured homes). Previously, a property owner whose federal adjusted gross income might have exceeded the income threshold for the homestead exemption was able to deduct up to \$250,000 of their business income, which in turn dropped them below the income threshold and allowed them to still qualify for the needs-based homestead

exemption. This change takes into account the presence of that income for purposes of determining eligibility for the homestead exemption and is part of other changes made to the business income deduction and Ohio's personal income tax.

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. For tax years 2019 and earlier (2020 for manufactured homes), Ohio began with federal taxable income and made additional changes to arrive at OAGI. Beginning with tax year 2020 (2021 for manufactured homes) Ohio begins with federal taxable income but no longer allows the deduction of business income and instead uses MAGI.

Federal rules require businesses to report the amounts paid to income recipients using approved forms, such as a W-2, Form 1099, Form SSA-1099, and Form 1099R. While these forms are not 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 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).

3. Department of Taxation Assistance to County Auditors

It is the auditor's responsibility to determine whether an individual applicant's income is no more than the applicable threshold. For those applicants who have filed an Ohio Income Tax return for the year before the year of application, the Department of Taxation has created a verification system, discussed *infra*, which will allow a limited number of auditor's staff to obtain Ohio eligible income reported to the Department of Taxation for the applicant and the applicant's spouse. However, in many cases, the applicant will not meet the threshold amounts under which a resident must file an income tax return.

If the applicant is not required to file an Ohio income tax return, DTE Form 105H has been prescribed to assist the auditor. This form addresses "modified adjusted gross income" and seeks information concerning the most common types of income typically earned by retired or disabled persons, as well as the most common types of deductions that could apply to such persons. The auditor should use this form with those applicants who have informed the auditor that they are not required to file income tax returns.

OAGI and MAGI Verification System

County auditors and up to three of their designees can verify MAGI for tax year 2020 and subsequent years (2021 for manufactured homes) and OAGI for tax year 2019 and prior years (2020 for manufactured homes) using data from state income tax returns. Disclosure of this confidential taxpayer data was made possible by 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 is 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 deciding if 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. Please consider the income-estimator form (DTE 105H) provided. Additionally, 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. 323.151(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. Similarly, any taxpayer who received a homestead exemption for 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, these provisions apply 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.

Ownership

To qualify for the real property homestead exemption, the applicant must own the occupied property. The following forms of ownership must be considered as ownership for homestead exemption purposes, but 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 acceptable owners.

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 include 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.

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 one 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 one 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 or irrevocable 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 crucial 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 settlor 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 or irrevocable 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. House Bill 130 (127th General Assembly), 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.

9. Ownership in General

Moreover, the *Gilman* decision held that the list of owners enumerated in R.C. 323.151(A)(2) was not exhaustive. Instead, the court interpreted the phrase “owner includes” to mean that the owners listed were merely illustrative of or included on the list of eligible owners. The court also quoted Black’s Law Dictionary (9th Ed.2009) to find the ordinary meaning of “owner” as “[o]ne who has the right to possess, use, and convey something; a person in whom one or more interests are vested.” Therefore, owners other than the seven specified in statute may be eligible applicants if they meet the court’s definition.

Calculation of Homestead Reduction

1. Real Property

The homestead reduction in taxes shall equal the greater of the homestead reduction granted for tax year 2006 (using the method with the old income test), if the applicant received a homestead reduction for that year, or the product of the following for the current tax year.

For purposes of the demonstration calculations, it is assumed that all the levies are qualified for rollback reimbursement, so a full combined rollback of 12½% is assumed. The auditor should use the complement of the sum of the actual non-business and owner occupancy factors certified by the tax commissioner for the year in question. Example: for a district that has a non-business factor of .076130 and an owner occupancy credit of .019032, the auditor would use 0.904848 (1-(.076130 + .019032)) instead of 0.875 in the formulas below.

Traditional Homestead

\$25,000 of the true value of the homestead;
(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).

Service-Connected Disability

\$50,000 of the true value of the homestead;
(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).

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 equal:

Traditional Homestead

$\$25,000$ (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
= $\$382.81$.

Service-Connected Disability

$\$50,000$ (true value) x 35% (assessment rate) x 50 mills (effective tax rate) x
(1 – 0.125) (rollback adjustment)
= $\$50,000$ x .35 x .05 x 0.875
= $\$17,500$ x .05 x 0.875
= $\$875.00$ x 0.875
= $\$765.63$.

For an applicant who was receiving the homestead exemption 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 2006¹ or \$382.81 (\$765.63 for qualifying veterans).

¹ If the county auditor discovers that the amount of the homestead reduction for tax year 2006 was calculated in error, for purposes of making this comparison, the auditor should use the amount under a correct calculation.

If the homestead's true value is \$25,000 or less (\$50,000 for qualifying veterans), the net tax liability on the homestead will be zero. The difference between \$25,000 (\$50,000) 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 11 of this Bulletin), if the homestead portion of the parcel has a true value of \$25,000 (\$50,000 for qualifying veterans) or less, the difference between \$25,000 (\$50,000) 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.

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.

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 method with the old income test), if the applicant received a homestead reduction for that, or the product of the following for the current tax year under the new method:

Traditional Homestead

- (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.

Service-Connected Disability

- (a) \$50,000 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 equal:

Traditional Homestead	100 Percent Service-Connected Veteran
$\$25,000 \text{ (cost)} \times 50\% \text{ (depreciation)} \times 40\% \text{ (assessment rate)} \times 60 \text{ mills (authorized tax rate)}$ $= \$25,000 \times .50 \times .40 \times .06$ $= \$12,500 \times .40 \times .06$ $= \$5,000 \times .06$ $= \$300$	$\$50,000 \text{ (cost)} \times 50\% \text{ (depreciation)} \times 40\% \text{ (assessment rate)} \times 60 \text{ mills (authorized tax rate)}$ $= \$50,000 \times .5 \times .40 \times .06$ $= \$25,000 \times .40 \times .06$ $= \$10,000 \times .06$ $= \$600$

For an applicant who was receiving the homestead exemption 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 2007² or \$300 (or \$600, if the applicant qualifies under the enhanced homestead exemption).

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 (\$50,000 or less for qualifying veterans), the net tax liability will be zero. The difference between \$25,000 (\$50,000, if applicable) and the home's true value or cost cannot be used to create a negative tax liability or produce a refund and cannot be applied to taxes on the land even if the homestead recipient is liable for those taxes by lease or other agreement.

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 **one** \$25,000 (\$50,000 for qualifying veterans) maximum reduction is allowed for both land and home.

Example 1: Total Reduction Applied Only to Land

If the true value of the land is \$25,000 (\$50,000 for qualifying veterans) 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.

Example 2: Total Reduction for Land and Home is Less Than Maximum

Assume the following additional facts: the true value of the land is \$5,000 for a

² 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.

traditional homestead recipient and \$10,000 for a qualifying veteran; 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 and \$30,000 for the qualifying veteran.

Since the total value of land and home is less than the \$25,000 for the traditional recipient and \$50,000 for the qualifying veteran, maximum allowed, the taxes on both land and home are reduced to zero by the homestead exemption.

Example 3: Total Reduction for Land and Home Exceeds Maximum

Assume the following additional facts: the true value of the land is \$10,000 for the traditional recipient and \$20,000 for the qualifying veteran; 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 for the traditional recipient and \$90,000 for the qualifying veteran.

Since the homestead reduction on the land is calculated first, \$10,000 of the maximum \$25,000 and \$20,000 of the maximum \$50,000 value reduction is applied to the land, and the taxes on the land are reduced to zero. The difference between the \$25,000 and \$50,000 maximum allowed value reduction and the value of the land is applied to the manufactured or mobile home. Thus, \$15,000 or \$30,000 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) for the year in which the manufactured home, homestead application is filed. For example, to allocate the reduction between land and home, combine the real estate application for 2016 with the manufactured home application for 2017. Correspondingly, combine a late real estate application for 2015 with a late manufactured home application for 2016.

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 (\$50,000) value reduction to all units on the manufactured home tax list based on their relative values.

3. Effect of Exemption for Disabled Veterans on Supplemental Tax Credit

Disabled Veterans who receive the expanded homestead exemption are no longer eligible to receive the partial exemption if granted by the county commissioners under R.C. 323.158 for real property and R.C. 4503.0610 for manufactured and mobile homes. These partial exemptions are only available in Hamilton County since Hamilton County is the only County that will ever be able to grant them.

Housing Cooperative

1. Definitions

Housing Cooperative

A qualifying “housing cooperative” is defined by R.C. 323.151(E) to be 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. Unlike condominium units, there is very little statutory law relating to housing cooperatives, which are, essentially, unique forms of property ownership encompassing both ownership of the whole, but rental of an individual housing unit.

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.

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 December 31.

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 age, disability, disabled veteran, and income qualifications if applicable in the same manner as other homestead applications.

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. Note that with the extension of the filing deadline to December 31st for real property, the auditor will continue to receive and perhaps deny applications after the notification date. Auditors are advised via this bulletin to provide notice of applications denied after the first Monday in October as quickly as possible to allow the applicant an opportunity to appeal before the close of the first half tax collection for the current year.

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).

County Reimbursement (Real Property and Manufactured Home)

1. Real Property Tax

Semi-Annual Settlement

The Real Property Tax Rollback reimbursement includes the Homestead Exemption along with the Non-Business and Owner Occupancy Credits. The County Auditor must summarize and certify the amount each entity is due for reimbursement. The County Treasurer must submit the 107A (Non-Business Credit certification), 107B (Homestead Exemption certification) and 107B1 (Owner Occupancy Credit certification) and balance to the totals submitted by the Auditor. Once both county reports have been audited and balanced, the Department of Taxation will reimburse within thirty days from the last postmark date or date of correction.

2. Manufactured Home Rollback

The Manufactured Home Homestead Exemption reimbursement is certified by the County Treasurer on form RA-DTA-MH-55 and is due on or before the second Monday in September of each year. The Non-Business and Owner Occupancy Credits are handled through the annual settlement.

County Auditor Forms can be requested at RevenueAccounting@tax.state.oh.us. All other forms can be accessed at <http://www.tax.ohio.gov/Government/forms.aspx>.

**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 for Homestead Exemption
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 105H – Addendum to Homestead Exemption Application (OAGI calculator)
8. DTE Form 105I – Homestead Exemption Application for Disabled Veterans and Surviving Spouses
9. DTE Form 106A – Homestead Exemption and 2.5% Reduction Certificate of Denial
10. DTE Form 106B – Homestead Exemption and 2.5% Reduction Complaint
11. DTE Form 106C – Certification of Reduction for Homestead Exemption for Senior Citizens, Disabled Persons and Surviving Spouses
12. 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>