STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE

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TO: **County Auditors**

FROM: **Amanda J. Stanley, Communications Specialist**

RE: **Homestead Standard Deduction from Assessed Valuation, IC 6-1.1-12-37**

DATE: **July 8, 2009**

The purpose of this memorandum is to provide an overview of the homestead standard deduction currently available and applicable to residential real property improvements used as the individual's principal place of residence or mobile/manufactured homes not assessed as real property ("mobile/manufactured home") used as the individual's principal place of residence and the immediately surrounding real estate, not exceeding one (1) acre located in the State of Indiana.

This memorandum incorporates the 2009 legislative changes as provided by House Enrolled Act (HEA) 1344 and HEA 1001(ss), which allow the homestead standard deduction to be applied to property owned by a trust and other entities.

Who qualifies?

Individuals

An individual who, on the assessment date or any date in the same year after an assessment date when an application is filed, either:

(1) Owns the residence;

(2) Is buying the residence under a contract, recorded in the county recorder's office, that provides that the individual is to pay the property taxes on the residence;

(3) Is entitled to occupy the residence as a tenant-stockholder (as defined in 26 U.S.C. 216) of a cooperative housing corporation (as defined in 26 U.S.C. 216).

Note: An individual who has sold real property or a mobile/manufactured home to another person under a contract, which provides that the contract buyer is to pay the property taxes, may not claim the mortgage deduction with respect to the real property or mobile/manufactured home. (Therefore, if John Doe sells his property on contract to Tom Smith, he can no longer receive the homestead standard deduction on that property. However, Tom Smith, who is

purchasing the property and who is liable for the property taxes, would be eligible for the homestead standard deduction.)

Trusts (effective 2009-pay-2010 and thereafter)

A trust is entitled to the homestead standard deduction for property owned by the trust and occupied by an individual if the county auditor determines that the individual:

(1) upon verification in the body of the deed or otherwise, has either:

a. a beneficial interest in the trust; or

b. the right to occupy the property rent free under the terms of a qualified personal residence trust created by the individual under United States Treasury Regulation 25.2702-5(c)(2);

(2) otherwise qualifies for the deduction; and

(3) would be considered the owner of the property under IC 6-1.1-1-9(f) or IC 6-1.1-1-9(g).

Note: When considering ownership, IC 6-1.1-1-9(f) states that when a life tenant of real property is in possession of the real property, the life tenant is the owner of that property. IC 6-1.1-1-9(g) states that when the grantor of a qualified personal residence trust is in possession of the real property transferred to the trust and entitled to occupy the real property rent free under the terms of the trust, the grantor is the owner of that real property.

Trusts (2008-pay-2009 removal and subsequent credit in 2009-pay-2010)

Under previous legislation, the homestead standard deduction was not applicable to property owned by a trust for 2008-pay-2009 property taxes. However, if that property met the requirements outlined above and received the homestead credit for 2007-pay-2008 property taxes, the homestead is entitled to a credit for the 2009-pay-2010 property taxes. The credit is in the amount of the remainder of: (1) the amount of the property taxes the trust paid with respect to the homestead for 2008-pay-2009 property taxes; minus (2) the amount of property taxes for which the trust would have been liable for 2008-pay-2009 had the homestead standard deduction and all related deductions and credits been applied.

Example: A trust-owned property received the homestead credit/standard deduction for 2007-pay-2008. The homestead standard deduction was removed for 2008-pay-2009 because the property was owned by a trust and the trust paid taxes on that property in the amount of $1,000. Had the homestead standard deduction been applied to the property for 2008-pay-2009 the tax liability would have been $300. (This tax liability included application of the homestead standard deduction, homestead supplemental deduction, additional state homestead credit and any local homestead relief provided.) Based on this tax liability, the trust will receive a $700 credit on the 2009-pay-2010 property taxes for that property.

The credit should be applied proportionately to all installments of property taxes first due and payable in 2010. *(In the case of the $700 credit used in the above example, $350 would apply to the spring installment and $350 would apply to the fall installment.)* If credit remains after the application of the credit to the trust's 2009-pay-2010 property taxes, the remaining credit shall be applied to the 2010-pay-2011 property taxes for the trust on that property. Interest does not apply in the determination of the amount of the credit.

A trust is not required to apply for the credit. The county auditor and county treasurer shall identify the homesteads eligible for the credit and apply the credit. The county auditor may reduce a taxing unit's assessed value in the manner permitted under IC 6-1.1-17-0.5(d) to enable the taxing unit to absorb the effects of reduce property tax collections for taxes first due and payable in 2010 that are expected to result from credits applied to trust owned homesteads.

If 2008-pay-2009 property tax bills have not yet been issued in a county, the auditor may choose to reinstate the homestead standard deduction for qualified trust-owned properties prior to billing rather than issue a credit on the 2009-pay-2010 property tax bills. However, the Department of Local Government Finance does not advise an auditor to reinstate these deductions for 2008-pay-2009 if this choice will cause a billing delay.

Corporations, Partnerships, Limited Liability Companies and Other Entities (effective 2009-pay-2010 and thereafter)

The term "homestead" does not include property owned by a corporation, partnership, Limited Liability Company or other entity not an individual or trust, unless the property satisfies the following requirements:

(1) The property is located in Indiana and consists of a dwelling and the real estate, not exceeding one (1) acre that immediately surrounds that dwelling.

(2) The property is the principal place of residence of an individual.

(3) The property is owned by an entity other that an individual or trust.

(4) The individual residing on the property is a shareholder, partner or member of the entity that owns the property.

(5) The property was eligible for the homestead standard deduction on March 1, 2009. *(i.e., if the property is eligible for the deduction on March 1, 2009, the deduction will be applied to the 2009-pay-2010 property taxes regardless of changes in ownership or eligibility.)*

Note: If the county auditor removed the homestead standard deduction for 2009-pay-2010, because the property was not owned by an individual or trust, the county auditor shall reinstate the deduction for 2009-pay-2010 if the taxpayer provides proof that the property is eligible for the deduction in accordance with the requirements above. Additionally, the individual residing on the property must provide proof that he is not claiming the deduction for any other property.

Example: If a county auditor removed the homestead standard deduction from property based on previous legislation and the taxpayer can provide proof that the property meets the requirements outlined above, the homestead standard deduction should be reapplied for 2009-pay-2010 and thereafter so long as the property remains eligible.

Limitations

The county auditor may not grant an individual or a married couple a homestead standard deduction if:

(1) the individual or married couple, for the same year, claims the deduction on two (2) or more different applications for the deduction; and

(2) the applications claim the deduction for different property.

Therefore, an individual or married couple cannot receive more than one (1) homestead standard deduction.

However, this limitation does not apply in the first year for which a homestead standard deduction is claimed if the sole reason that a deduction is claimed on other property is that the individual or married couple maintained a principal residence at the other property on the assessment date and the individual or married couple is moving the individual's or married couple's principal residence to the property that is the subject of the application.

Example 1, Limitation Applies: John Doe maintains his primary residence at Property 1 on March 1, 2009 and his wife maintains her primary residence at Property 2 on March 1, 2009. Mr. and Mrs. John Doe, so long as they are legally married, can receive a homestead standard deduction on only one of the properties.

Example 2, Limitation Applies: Jane Moore maintains her primary residence at Property 1 on March 1, 2009. On October 31, 2009, she purchased Property 2, which did not have the homestead standard deduction applied by the previous owner on March 1, 2009. Jane does not move her principal residence to this property. Jane will continue to receive the homestead standard deduction on Property 1. She will not be eligible to receive the homestead standard deduction on Property 2.

Example 2, Limitation Does Not Apply: Tom Smith maintains his primary residence at Property 1 on March 1, 2009 and has successfully filed for the homestead standard deduction on that property. Jane Moore maintains her primary residence at Property 2 on March 1, 2009 and has successfully filed for the homestead standard deduction on that property. Tom and Jane are married on July 1, 2009 and purchase Property 3, which will now be their primary residence. The homestead standard deduction will be applied to Property 1, Property 2 and Property 3 for 2009-pay-2010 property taxes. The deduction will be applied to Property 1 and Property 2 because the properties were their individual primary residences on March 1, 2009 and both successfully applied for the deduction. The married couple will receive the homestead on Property 3, because they met all eligibility requirements including application by the December 31, 2009 deadline. The homestead will be removed from Property 1 and Property 2 for 2010-pay-2011 unless new owners purchase the properties and file for their own deductions on or before December 31, 2010.

What is the maximum deduction amount?

The total amount of homestead standard deduction, which an individual may receive for a particular year, is the lesser of:

(1) sixty percent (60%) of the assessed value of the real property or mobile home; or

(2) forty-five thousand dollars ($45,000).

Note: Under IC 6-1.1-12-40.5 and notwithstanding any other provision, the sum of the deductions provided to a mobile home may not exceed one-half (1/2) of the assessed value of the mobile home. (Therefore, if a mobile home is valued at $50,000, the maximum amount of deductions the owner will receive on this property is $25,000. ***The homestead supplemental deduction is the only deduction applied outside of this limitation****.)*

How can a person file for the deduction?

In applying for the homestead standard deduction, the individual shall complete State Form 5473 or the homestead application portion of the Sales Disclosure Form (Part F).

Note: The application or Sales Disclosure Form may be filed in person or by mail. If mailed, the mailing must be postmarked on or before the last day for filing.

Beginning July 1, 2009, an individual who desires to claim the homestead standard deduction must provide the last five (5) digits of his Social Security number and the last five (5) digits of his driver's license number. If the applicant is married, the last (5) digits of the spouse's Social Security number and the last five (5) digits of the spouse's driver's license number also must be provided. If the applicant or the applicant's spouse (if any) do(es) not have a Social Security number, any of the following may be provided for that individual:

(1) The last five (5) digits of the individual's driver's license number. *(Note: In the event no Social Security number is available for the applicant or the spouse, the last five (5) digits of the driver's license number alone are sufficient identification.)*

(2) The last five (5) digits of the individual's state identification number.

(3) The last five (5) digits of a control number that is on a document issued to the individual by the federal government.

Real Property

The application or Sales Disclosure Form must be completed and dated in the calendar year for which the person wishes to obtain the deduction and filed with the county auditor on or before January 5 of the immediately succeeding calendar year. (Therefore, if the application or Sales Disclosure Form is completed and dated on or before December 31, 2009 and filed with the county auditor on or before January 5, 2010, the homestead standard deduction application deadline would be satisfied for property taxes first due and payable in 2010.)

Mobile Home

The application or Sales Disclosure Form must be completed, dated and filed with the county auditor during the twelve (12) months before March 31 of each year for which the individual wishes to obtain the deduction. (Therefore, if the application is filed before March 31, 2009, the homestead standard deduction application deadline would be satisfied for property taxes first due and payable in 2009.)

What are the penalties for falsely claiming the deduction?

An individual who is receiving the homestead standard deduction or who otherwise qualifies property for the deduction must file a certified statement with the county auditor, notifying the auditor of the change of use or eligibility, not more than sixty (60) days after that the date of that change.

A statement should be filed if the individual:

(1) changes the use of the property for that part or all of the property no longer qualifies for the deduction (*i.e. the individual no longer resides on the property or the individual begins renting part of all of the property)*; or

(2) is no longer eligible for the deduction because:

a. the individual would receive the benefit of more than one (1) deduction; or

b. the individual maintains his principal place of residence with another individual who receives the homestead standard deduction *(John Doe and Jim Smith both maintain primary residency at Property 1. Jim Smith has filed for the homestead*

standard deduction on this property. John Doe cannot claim a homestead standard deduction on another property because his primary residence is at Property 1. Should he falsely claim another homestead, the penalties described below would apply.)

An individual who fails to file the statement with the county auditor is liable for any additional taxes that would have been due on the property if the individual had filed the statement plus a civil penalty equal to ten percent (10%) of the additional taxes due. The civil penalty is in addition to any interest and penalties for delinquent payment that might otherwise be due.

When should the deduction be applied?

2009-pay-2010

If the deduction is on the property as of the assessment date (March 1, 2009 for real property, January 15, 2009 for mobile/manufactured homes) the deduction will remain on the property for 2009-pay-2010 regardless of changes in ownership or eligibility.

Assuming all eligibility requirements are met, if the application for the deduction is completed and dated on or before December 31, 2009 and the application is filed with the county auditor on or before January 5, 2010, the deduction will be applied to the property for 2009-pay-2010.

2008-pay-2009

In order to receive the homestead standard deduction for 2008-pay-2009, the individual had to meet all eligibility requirements and file for the deduction on or before December 31, 2008.

When should the deduction be removed?

2009-pay-2010

If the deduction is on the property as of the assessment date (March 1, 2009 for real property, January 15, 2009 for mobile/manufactured homes) and the owner of the property becomes ineligible on or before December 31, 2009, the homestead standard deduction should remain on the property for 2009-pay-2010 and be removed for 2010-pay-2011 <u>unless</u> a new owner purchases the property and meets all eligibility requirements, including filing, for his own homestead standard deduction on or before December 31, 2010.

2008-pay-2009

If an individual became ineligible for the homestead standard deduction on or before December 31, 2008, that deduction was removed for the 2008-pay-2009 property taxes. Recently, the Department has been informed that death does not warrant ineligibility for the homestead standard deduction. Therefore, if the county auditor removed the homestead standard deduction from a property upon the owner's death that deduction may be reapplied to the 2008-pay-2009

property tax bill. **If the deduction is reinstated, the county auditor should issue a corrected fall installment tax bill that credits the taxpayer for the amount of homestead benefit the taxpayer would have received in 2008-pay-2009 had the deduction not been removed.** If the new owner of the property has not applied for his own homestead standard deduction by December 31, 2009, the homestead standard deduction shall be removed for the 2009-pay-2010 property taxes.

Example: Mrs. Smith maintained her primary residency at Property 1 and had successfully filed for the homestead standard deduction on that property. Mrs. Smith passes away on December 1, 2008 and the property continues to be owned by her estate. Under previous guidance this deduction would have been removed from the property for the 2008-pay-2009 property taxes because Mrs. Smith became ineligible for the deduction in 2008. However, death does not warrant ineligibility for the homestead standard deduction. Based on this new guidance, the county auditor may choose to reinstate the homestead standard deduction on Mrs. Smith's property for 2008-pay-2009 and issue a corrected fall installment tax bill. The homestead would be removed from the property beginning in 2009-pay-2010 unless the new owner has applied for his own deductions on or before December 31, 2009.

If you have any questions, please contact Communications Specialist Amanda Stanley at 317-233-9218 or astanley@dlgf.in.gov.