STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE

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TO: County Auditors and Township and County Assessors

FROM: Courtney L. Schaafsma, Commissioner

RE: 2016 Legislative Changes Affecting Property Tax Deductions

DATE: March 30, 2016

This memorandum addresses various 2016 legislative changes concerning property tax deductions. Please note that this memorandum is intended to be an informative bulletin; it is not a substitute for reading the law.

I. Veteran Deductions

On March 22, 2016, Governor Pence signed into law Senate Enrolled Act 304 ("SEA 304-2016"), which makes various changes concerning property tax deductions for disabled veterans.

A. Totally Disabled Veteran Deduction

First, IC 6-1.1-12-14 is amended, effective January 1, 2017 (the 2017 Pay 2018 cycle), so that a disabled veteran is not eligible for the "totally disabled" veteran deduction if the assessed value of the veteran's Indiana real property, Indiana mobile home not assessed as real property, and Indiana manufactured home not assessed as real property exceeds $175,000. Under current law, by contrast, the veteran would not be eligible for this deduction if the assessed value of all of the veteran's "tangible" property exceeds $143,160. So the amendment both raises the assessed value limit and counts only certain types of Indiana property toward that limit. This particular deduction is available to veterans who are either totally disabled (need not be service-connected) or who are at least 62 years of age with a disability of at least 10% (need not be service-connected). More veterans should qualify for this deduction than before. Veterans previously ineligible for the deduction must apply for it to receive it starting with the 2017 Pay 2018 cycle.

B. Deduction for Homestead Donated to Veteran

SEA 304-2016 introduces a new deduction at IC 6-1.1-12-14.5, effective January 1, 2017 (the 2017 Pay 2018 cycle), which allows a veteran to claim a deduction from the assessed value of the individual's homestead if:

(1) the individual served in the military or naval forces of the United States for at least 90 days;
(2) the individual received an honorable discharge;
(3) the individual has a disability of at least 50%;
(4) the individual's disability is evidenced by:

(A) a pension certificate or an award of compensation issued by the United States Department of Veterans Affairs; or
(B) a certificate of eligibility issued to the individual by the Indiana Department of Veterans' Affairs ("IDVA") after IDVA has determined that the individual's disability qualifies the individual to receive a deduction under this new statute; and

(5) the homestead was conveyed without charge to the individual who is the owner of the homestead by an organization that is exempt from income taxation under the federal Internal Revenue Code.

The amount of the deduction is determined as follows:

(1) If the individual is totally disabled, the deduction is equal to 100% of the assessed value of the homestead.
(2) If the individual has a disability of at least 90% but the individual is not totally disabled, the deduction is equal to 90% of the assessed value of the homestead.
(3) If the individual has a disability of at least 80% but less than 90%, the deduction is equal to 80% of the assessed value of the homestead.
(4) If the individual has a disability of at least 70% but less than 80%, the deduction is equal to 70% of the assessed value of the homestead.
(5) If the individual has a disability of at least 60% but less than 70%, the deduction is equal to 60% of the assessed value of the homestead.
(6) If the individual has a disability of at least 50% but less than 60%, the deduction is equal to 50% of the assessed value of the homestead.

A veteran who claims this deduction for an assessment date may not also claim a "partially disabled veteran deduction" or "totally disabled veteran deduction" under IC 6-1.1-12-13 or 14, respectively, for that same assessment date.

A veteran claiming this deduction must do so on a form prescribed by the Department of Local Government Finance ("Department"). The Department will update State Form 12662 in late 2016 to include this deduction.

II. Homestead Deduction

SEA 304-2016 makes an amendment to the homestead deduction statute (IC 6-1.1-12-37), effective January 1, 2017 (the 2017 Pay 2018 cycle). The amendment concerns the provision whereby a person who is serving on active duty in any branch of the armed forces of the United States and is ordered to transfer to a location outside Indiana can, under certain circumstances, continue to claim the homestead deduction during the person's absence. Specifically, the property continues to qualify as a homestead even if the property is leased while the individual is away from Indiana and is serving on active duty, if the individual has lived at the property at any time during the past 10 years. Otherwise, the property ceases to qualify as a homestead if it is leased while the individual is away from Indiana. Under current law, by contrast, there are no exceptions to the idea that the property ceases to qualify for the deduction if it is leased.

House Enrolled Act 1273-2016 ("HEA 1273-2016") and House Enrolled Act 1081-2016 ("HEA 1081-2016"), signed into law by Governor Pence on March 24, 2016, both make a variety of technical changes to the homestead deduction statute (effective January 1, 2017 [the 2017 Pay 2018 cycle]). Because these changes do not substantively alter the operation of the homestead deduction, the Department will not elaborate on these changes in this memorandum. Specific questions about these changes may be directed to the contact below.

III. Ineligible Homestead Deduction Procedures

HEA 1273 amends IC 6-1.1-36-17, which governs the procedures for handling an ineligible homestead deduction. The amendment is effective July 1, 2016.

Most significantly, auditors now have *discretion* to seek the taxes and penalty corresponding to an ineligible homestead deduction. Moreover, if an auditor chooses to seek the taxes and penalty, the auditor may do so only within three years after the date on which taxes for the particular year are first due. An auditor choosing to seek the taxes and penalty must issue a notice of taxes, interest, and penalties due to the owner that improperly received the deduction and include a statement that the payment is to be made payable to the county auditor.

The notice must require full payment of the amount owed within:

(1) one year with no penalties and interest, if:
 (A) the taxpayer did not comply with the requirement to return the homestead verification form ("pink form"); and
 (B) the county auditor allowed the taxpayer to receive the homestead deduction in error; or

(2) 30 days, if subdivision (1) does not apply.

By way of example, if John did not return a verification form for his property and the county erroneously left the deduction on the property anyway, John would have one year to repay the taxes <u>if</u> the auditor chooses to seek those taxes from John. However, John would NOT owe the 10% civil penalty. Conversely, if Bob returned a verification form for his property indicating his eligibility for the deduction and it turns out he was not in fact eligible, and <u>if</u> the auditor chooses to seek the taxes and penalty from Bob, Bob would have 30 days to pay the amount due (taxes and 10% civil penalty). What is more difficult to classify under this new amendment is the situation where a person *did* return a verification form indicating his ineligibility for the deduction, but the county erroneously leaves the deduction in place nonetheless. Under those circumstances, the Department would encourage auditors to use their discretion and NOT seek the taxes and penalty from such a person.

The Department strongly recommends that auditors and their staffs read through IC 6-1.1-36-17 in its entirety to fully understand the process for handling an ineligible homestead deduction.

IV. Deductions on Property Owned by a Trust

On March 24, 2016, Governor Pence signed into law Senate Enrolled Act 371 ("SEA 371-2016"), which amends IC 6-1.1-12-17.9 concerning the eligibility of property owned by a trust for certain deductions. The law continues to allow a person to claim certain deductions on property owned by a trust if the person has a beneficial interest in the trust (or “the right to occupy the real 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)”) and the person otherwise qualifies for the deduction. However, the law no longer requires the person to be “considered the owner of the real property under IC 6-1.1-1-9(f) or IC 6-1.1-1-9(g),” meaning a life tenant or grantor of a qualified personal residence trust.

Property owned by a trust can still potentially have the following deductions: over 65; blind/disabled person; partially disabled veteran; totally disabled veteran; surviving spouse of World War I veteran; standard homestead deduction; and supplemental homestead deduction. As a reminder, the same person cannot claim an over 65 deduction along with deductions other than the mortgage, standard homestead, supplemental homestead, and fertilizer storage deductions.

V. Heritage Barn Deduction

On March 24, 2016, Governor Pence signed into law House Enrolled Act 1215 (“HEA 1215-2016”), which amends IC 6-1.1-12-26.2 concerning the heritage barn deduction. The amendment is effective July 1, 2016.

The heritage barn deduction is now only available for a <u>mortise and tenon barn</u> that on the assessment date was constructed before 1950 and retains sufficient integrity of design, materials, and construction to clearly identify the building as a barn. <u>There is no longer any prohibition against using the barn for agricultural purposes in the operation of an agricultural enterprise or for business purposes</u>. Statute defines “mortise and tenon barn” to mean a barn that was built using heavy wooden timbers, joined together with wood-pegged mortise and tenon joinery, that form an exposed structural frame.

Statute now requires the applicable township or county assessor to verify that the barn was constructed before 1950. Moreover, the auditor must apply the deduction to a heritage barn that received the deduction in the preceding year unless the auditor determines that the property is no longer eligible for the deduction *because the barn was not constructed before 1950*. Statute did not previously include this phrase. The Department understands this to mean that if Barn A qualified for and received the heritage barn deduction under the previous version of the law on January 1, 2016, but Barn A is not a mortise and tenon barn, Barn A will <u>NOT</u> lose the deduction for January 1, 2017 since Barn A was built before 1950. It is still the case that this deduction terminates following a change in ownership of the heritage barn (if John sells Barn A to Bob, John’s heritage barn deduction is removed for the following assessment date and Bob must apply in his own name). Generally, however, the only basis an auditor has now for removing a heritage barn deduction from a heritage barn already receiving it is if the auditor determines that the barn was not constructed before 1950. Thus, auditors and assessors should give special attention to ensuring that barns for which the deduction is initially granted are in fact eligible.

VI. Abatements

HEA 1273 amends several abatement statutes.

Under IC 6-1.1-12.1-5, a taxpayer who fails to timely apply for the rehabilitated property abatement may file between January 1 (rather than March 1) and May 10 of a subsequent year. Moreover, if a designating body fails either to set the number of years for the abatement or the abatement schedule, the auditor must return the application to the designating body so it can remediate the error. These changes are effective July 1, 2016.

Under IC 6-1.1-12.1-5.3, a taxpayer who fails to timely apply for a vacant building abatement may file between January 1 (rather than March 1) and May 10 of a subsequent year. This change is effective retroactive to January 1, 2016.

Under IC 6-1.1-40-11, a taxpayer seeking to apply for a deduction for manufacturing equipment in a maritime opportunity district must do so between January 1 (rather than March 10) and May 15 of that year. This amendment is effective retroactive to January 2, 2016.

Under IC 6-1.1-44-6, a taxpayer seeking to apply for a deduction for purchases of investment property by manufacturers of recycled components must file the application between January 1 (rather than March 10) and May 15 of that year. A person that obtains a filing extension for the year in which the investment property is installed must file the application between January 1 (rather than March 10) and the extended due date for that year. This amendment is effective retroactive to January 2, 2016.

VII. Property Tax Disclosure Form

HEA 1273 repeals IC 6-1.1-36-18, which was introduced in 2015 and implemented a county-optional "property tax disclosure" that, if adopted by a county, would have required a party to disclose any delinquent taxes when applying for certain benefits, such as property tax deductions or exemptions.

VIII. Sunset of Certain Deductions

On March 24, Governor Pence signed into law Senate Enrolled Act 309 ("SEA 309-2016"), which sunsets certain deductions. No new deductions for the rehabilitation of residential property under IC 6-1.1-12-18 may be granted after the January 1, 2017 assessment date. SEA 309-2016 also amends IC 6-1.1-12-22 so that no new deductions for the rehabilitation of historic property (a building or structure erected at least 50 years before the date of the deduction application) may be granted after the January 1, 2017 assessment date. Corresponding changes are made to IC 6-1.1-12-19, 20, 23, 24, 25, 46, IC 6-1.1-12.1-6, and IC 6-1.1-42-22.

Contact Information

Questions may be directed to General Counsel Mike Duffy at (317) 233-9219 or mduffy@dlgf.in.gov.