STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE

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TO: **Assessing Officials & Property Tax Boards of Appeal**

FROM: **Wesley R. Bennett, Commissioner**

RE: **Legislation Affecting Assessment Matters**

DATE: **June 26, 2023**

The Department of Local Government Finance ("Department") issues this memorandum to inform the public of legislative changes concerning assessment matters. Please note that this memorandum is for informational purposes only, and it is not a substitute for reading the law. Except as otherwise stated, all provisions are effective July 1, 2023.

I. The Homestead Deduction

On May 4, 2023, Governor Eric J. Holcomb signed into law Senate Enrolled Act 325-2023 ("SEA 325"). Section 2 revises the definition of property that must be considered part of the homestead property under Ind. Code § 6-1.1-12-37. This clarifying change was in response to the Indiana Tax Court's decision in *Schiffler v. Marion County Assessor*, 21-TA-00014 (Ind. Tax Ct. 2021). These changes are effective January 1, 2024, and first apply to the January 1, 2024 assessment date.

Prior to *Schiffler*, assessors generally applied the homestead to one house, one attached garage, and up to one acre of immediately surrounding property. The Indiana Tax Court held in that case that the language in Ind. Code § 6-1.1-12-37 was not clear enough to limit the homestead and 1% tax cap to *only* one house and one garage.

Section 2 of SEA 325, therefore, amends Ind. Code § 6-1.1-12-37 in three ways.

A. Definition of "Dwelling"

First, it modifies the definition of "dwelling" to say, in reference to residential real property improvements that is used as an individual's residence, the property is "limited to a single house and a single garage, regardless of whether the single garage is attached to the single house or detached from the single house." Therefore, "dwelling" for purposes of the homestead deduction may consist of a single house and an attached or detached garage, but not more. Note that a "dwelling" is not synonymous with the homestead property, itself.

B. Definition of "Homestead"

Second, the definition of "homestead" is modified to consist of a dwelling (as described above) and "up to one (1) acre of land immediately surrounding that dwelling, and any of the following improvements:

(1) Any number of decks, patios, gazebos, or pools.

(2) One (1) additional building that is not part of the dwelling if the building is predominantly used for a residential purpose and is not used as an investment property or as a rental property.

(3) One (1) additional residential yard structure other than a deck, patio, gazebo, or pool."

With this modification of the definition of "homestead", the qualifying improvements do not have to be within the one (1) acre of land immediately surrounding the dwelling. Prior to the revisions under SEA 325, Ind. Code § 6-1.1-12-37(m) specified that qualifying residential yard structures must be attached to the dwelling. Subsection (m) of the current statute has been repealed.

C. Eligibility of Business Entities

Finally, Ind. Code § 6-1.1-12-37(k) and (l) are amended to remove provisions that allowed a corporation, limited liability company, partnership, and similar entities to receive homestead deductions if they were receiving the deduction for taxes due and payable in 2010. This was an exception to the provision in Ind. Code § 6-1.1-12-37(a) that prohibits these business entities from receiving the homestead deduction even if they are the owners of the homestead property. Note that this is not necessarily a legislative change in response to *Schiffler*.

Therefore, SEA 325 provides that these entities are no longer eligible to receive the homestead deduction starting with taxes due and payable in 2025. However, cooperative housing corporations (defined in 26 U.S.C. 216) and qualified personal residence trusts (created by U.S. Treasury Regulation 25.2702-5(c)(2) are still eligible to receive the homestead deduction.

Example Scenarios:

(1) A taxpayer owns one house and a surrounding acre of land, both of which are eligible for the homestead deduction. It has an attached garage, located on the one-acre of land, and it is used to store work tools and a personal vehicle. Does the homestead deduction apply to the garage?

Answer: Yes. In this case, the garage is primarily used for residential purposes.

(2) Using the same set of facts as (1) above, except that the garage is used to run an auto-body shop, as permitted by the city, can the homestead deduction be applied to the garage?

Answer: No. The garage is used primarily to run a business.

(3) Using the same set of facts, except that the garage was converted to a finished carriage house rented by a tenant year-round, is it still eligible for the homestead?

Answer: No. While the carriage house is residential property and could be the one additional building allowed to be within the one acre of the homestead property, it is being used as a rental property and arguably as an investment, which is prohibited.

(4) Using the same set of facts as (3) above, except that the carriage house is rented as an Airbnb only for the Indy 500 weekend, while the rest of the year, the taxpayer's family uses it for recreational space and study. Is it eligible for the homestead?

Answer: Yes, assuming no other facts and the carriage house's predominant use is residential. The carriage house is primarily used as part of the homestead property. It is rented out only a few days per year.

(5) An individual has a home that is their primary residence on a three-acre parcel, and the parcel contains a detached garage and a large shed for gardening supplies. While the detached garage is located within the one acre of land immediately surrounding the dwelling, the large shed is not. Which structures are eligible for the homestead deduction?

Answer: All three structures would be eligible for the homestead deduction. As amended under Section 2 of SEA 325, the qualifying residential yard structures are not required to be within the one acre of land immediately surrounding the dwelling.

(6) An individual has a home that is their primary residence on a three-acre parcel, and the parcel contains an attached garage, a detached garage, a large shed for gardening supplies, and a medium shed used to store a riding lawnmower. This property would have more than one additional building that is not part of the dwelling and both are predominantly used for a residential purpose. Which shed would be included in the homestead?

Answer: As contemplated under Ind. Code § 6-1.1-31.5-2.5 (current law), the deduction shall be applied in a manner that will maximize the benefit of the deduction to the taxpayer. This means that the shed property with the greatest assessed value should be the structure included within the homestead.

II. Nonresidential Real Property & Residential Real Property

Sections 3 and 4 of SEA 325, both effective January 1, 2024, redefine certain classifications of property for property tax cap purposes.

Section 3 of SEA 325 amends Ind. Code § 6-1.1-20.6-2.5 to redefine "nonresidential real property" subject to the three percent (3%) property tax cap to mean real property that is not:

(1) a homestead (as defined in Ind. Code § 6-1.1-20.6-2);

(2) residential property (as defined in Ind. Code § 6-1.1-20.6-4);

(3) long term care property (as defined in Ind. Code § 6-1.1-20.6-2.3); or

(4) agricultural land (as defined in Ind. Code § 6-1.1-20.6-0.5).

The following have been removed from this definition:

(1) A building or other land improvement, including the footprint on which the building or improvement is situated.

(2) Undeveloped land in the parcel that is not part of the homestead or residential property.

SEA 325 changes the definition of "nonresidential property" so that, while long term care properties and agricultural land were previously classified as "nonresidential," both are now specifically excluded from the definition of "nonresidential property" in Ind. Code § 6-1.1-20.6-2.5. However, long term care properties[1] and agricultural land[2] are still subject to the two percent (2%) property tax cap under Ind. Code § 6-1.1-20.6-7.5(a)(3) and Ind. Code § 6-1.1-20.6-7.5(a)(4), respectively.

Additionally, Section 4 of SEA 325 amends the definition of "residential property" in Ind. Code § 6-1.1-20.6-4 to now include land, buildings, and residential yard structures including decks, patios, gazebos, and pools that are not part of a homestead, but that are predominately used for residential purposes (such as residential rental property). In addition, there is no longer a limitation that the land on which the single-family dwelling is located not exceed one (1) acre. In other words, what was previously classified as excess residential property (subject to the three percent (3%) property tax cap) will now be considered "residential property" subject to the two percent (2%) property tax cap. Additionally, the changes made by SEA 325 will also place some properties that may previously have been categorized as non-homestead (in a 2% or 3% category) in the homestead classification.

III. Limitation on Appeals of Determination on Homestead Deduction

On May 4, 2023, Governor Eric J. Holcomb signed into law House Enrolled Act 1454-2023 ("HEA 1454"). Section 25 of HEA 1454 amends Ind. Code § 6-1.1-15-1.1, effective July 1, 2023, to bar appeals of errors founded on claims that property was or was not eligible for the homestead deduction, to no later than one (1) year after the date on which the property that is subject to the appeal is assessed. In other words, taxpayers appealing a determination of what property is or is not included within the homestead as of the January 1, 2023 assessment date have until December 31, 2023 to file an appeal on this determination. Taxpayers appealing any

[1] "Long term care property" is also still defined under Ind. Code § 6-1.1-20.6-2.3.
[2] "Agricultural land" is also still defined under Ind. Code § 6-1.1-20.6-0.5.

other matters related to the assessment of property or the removal of a property tax incentive are still subject to the appeal deadlines outlined in Ind. Code § 6-1.1-15-1.1.

IV. Land Orders

Section 16 of HEA 1454 amends Ind. Code § 6-1.1-4-13.6 to require county assessors determining land values to submit land orders, and to provide verification the land orders have been implemented, to the Department and the county property tax assessment board of appeals ("PTABOA"). Current law specifies that the assessor must submit completed land orders to the PTABOA; however, there is no requirement that the completed land order be submitted to the Department. Additionally, the current statute also specifies that if the county assessor fails to complete a land order within the cyclical reassessment period, the PTABOA is required to complete the land order process. If the PTABOA fails to complete the land order process, the Department is required to complete a land order for the county. The additional required notice to the Department under Section 16 will ensure that the required determination of land values will take place during the cyclical reassessment period.

Section 14 of HEA 1454 amends Ind. Code § 6-1.1-4-4.2 by specifying the Department may not approve a county's cyclical reassessment plan before the county assessor provides verification that a land order (subject to Ind. Code § 6-1.1-4-13.6 requirements above) has been completed during the previous cyclical reassessment period.

V. Business Personal Property

Section 12 of HEA 1454 amends Ind. Code § 6-1.1-3-9 specifying taxpayers must make a complete disclosure of all information required by the Department related to the value, nature, *and* location of a property. This clarifying change was in response to the Indiana Tax Court's decision in *Ingredion Incorporated v. Marion County Assessor*, 20-TA-00006 (Ind. Tax Ct. 2020). Prior to the revisions under HEA 1454, Ind. Code § 6-1.1-3-9 specified that in completing a personal property return, a taxpayer was required to disclose all information related to the value, nature, *or* location of the property.

VI. Mini Mill Property

As adopted during the 2022 Legislative Session under House Enrolled Act 1002, Ind. Code § 6-1.1-3-23.5 specified that a taxpayer may elect to calculate the true tax value of mini-mill equipment by multiplying the adjusted cost (as defined in Ind. Code § 6-1.1-3-23(b)(1)) by the applicable percentage set forth in the Pool No. 5 depreciation table under Ind. Code § 6-1.1-3-23(c) and (d). This election may be made notwithstanding the Department's administrative rules found in 50 IAC 4.2-4-4, 50 IAC 4.2-4-6, and 50 IAC 4.2-4-7; however, a taxpayer could not make this election if the Department certified that there were outstanding bond obligations that would be impaired as a result of the election.

Section 13 of HEA 1454, effective upon passage, removes the provision that specifies a mini-mill equipment property owner may not elect to use the Pool No. 5 depreciation table if the Department determines that the election would impair outstanding bond obligations. In other

words, mini-mill equipment property owners may not elect to use the Pool No. 5 depreciation schedule without seeking a determination by the Department, as long as the property meets the eligibility requirements outlined in Ind. Code § 6-1.1-3-23.5.

VII. Parcel Characteristics

During the 2022 Legislative Session, Section 7 of House Enrolled Act 1260 repealed Ind. Code § 6-1.1-4-4.4, which included a provision related to the documentation of changes made by the assessor to the underlying parcel characteristics. Section 15 of HEA 1454 adds Ind. Code § 6-1.1-4-4.9, which reinserts the requirement for assessors to document changes made to the underlying parcel characteristics.

> **IC 6-1.1-4-4.9**
> **Sec. 4.9. (a) This section applies to an assessment:**
> **(1) under section 4.2 or 4.5 of this chapter or another law; and**
> **(2) occurring after December 31, 2023.**
> **(b) If the township assessor, or the county assessor if there is not township assessor for the township, changes the underlying parcel characteristics, including age, grade, or condition, of a property from the previous year's assessment date, the township or county assessor shall document:**
> **(1) each change; and**
> **(2) the reason that each change was made.**

VIII. Greenhouse Property

Section 20 of HEA 1454, retroactively effective January 1, 2023, adds Ind. Code § 6-1.1-8.1 as a new section regarding controlled environment agriculture property. This section defines "controlled environment agriculture property" to include land and improvement of an agricultural greenhouse that is used to produce fresh vegetables, fruits, or other agricultural produce grown indoors under climate-controlled conditions, year-round, and for commercial purposes. The land of a controlled environment agricultural property shall be classified and assessed as agricultural land, and the improvements must be classified and assessed as an agricultural greenhouse.

IX. Apartment Assessments

Section 18 of HEA 1454 amends Ind. Code § 6-1.1-4-39 regarding the assessment of real property regularly used to rent or otherwise furnish residential accommodations for periods of thirty (30) days or more that have more than four (4) rental units. For assessment dates beginning after December 31, 2023, the assessor shall annually perform a valuation of the property that is equal to the lowest valuation determined by each of the following appraisal approaches:

(1) Cost approach that includes an estimated reproduction or replacement cost of buildings and land improvements as of the date of valuation together with estimates

of the losses in value that have taken place due to wear and tear, design and plan, or neighborhood influences.

(2) Sales comparison approach, using data for generally comparable property.

(3) Income capitalization approach, using an applicable capitalization method and appropriate capitalization rates that are developed and used in computations that lead to an indication of value commensurate with the risks for the subject property use.[3]

The assessing official must annually report to the taxpayer each of the values determined under the three (3) appraisal approaches on a form prescribed by the Department. For assessments beginning after December 31, 2023, the Department will be establishing a new Form 11-A for the purpose of providing a notice of the assessment of rental units and apartment properties to property owners. The Department will be issuing further guidance on this new form in the coming months.

Additionally, the new language added to Ind. Code § 6-1.1-4-39 specifies that when determining the true tax value of these rental unit and apartment properties, the assessing official must use the Department's cost schedules without modifiers, adjustments, or other trending factors. The assessing official also have the burden of proof to establish that the assessment is correct and that the assessed value is the lowest of the three (3) appraisal approaches, and the property owner may request an explanation concerning how the assessed value of the property was calculated.

X. State Distributable Property

A. Wind Power Devices

On May 1, 2023, Governor Eric J. Holcomb signed into law House Enrolled Act 1401-2023 ("HEA 1401"). All sections of HEA 1401 are effective January 1, 2024. Section 1 of HEA 1401 amends Ind. Code § 6-1.1-8-19.5 by requiring a public utility company that currently owns or operates a wind power device, to report, after a change in ownership of the wind power device, on its first annual return the valuation of the device at the same valuation amount that the previous owner included on the last annual report before the change in ownership. This required carry-over reporting only applies if the valuation amount that the acquiring public utility company would otherwise enter on its first report is lower than the valuation amount at which the previous owner valued the wind power device before the change in ownership.

For subsequent years, the new owner must calculate and report the valuation of the wind power device in accordance with:

[3] Indiana Code § 6-1.1-4-39(d) specifies that if a taxpayer wishes to have the income capitalization method or the gross rent multiplier method used in the initial formulation of the assessment of the taxpayer's property, the taxpayer must submit the necessary information to the assessor not later than the assessment date. As a best practice, the Department would recommend reaching out to these property owners before the assessment date to facilitate the collection of any necessary information needed to complete the income capitalization method or gross rent multiplier calculation.

(1) the statute concerning the taxation of public utility companies; and

(2) rules prescribed by the department.

Additionally, Section 1 specifies that the new valuation provisions do not apply to a public utility company that owns or operates one or more wind power devices, *and* that has signed or countersigned an economic development agreement, or another financial agreement, that is entered into:

(1) with the county in which the public utility company's wind power devices are located; and

(2) for the purpose of repowering, or upgrading the technology used in, the wind power devices; before a sale or transfer of the wind power devices.

B. All State Distributable Property

Section 19 of HEA 1454 amends Ind. Code § 6-1.1-8-27 by changing the date the Department certifies state distributable assessed values to county assessors and county auditors from June 15 to July 1.

Section 59 of HEA 1454 amends Ind. Code § 6-1.1-35-9 regarding information that is considered confidential and permissible uses of confidential information received from property owners. The revision to Ind. Code § 6-1.1-35-9 specifies that the Department may disclose confidential information—including the annual return filed by state distributable property owners—to the county assessor and the county auditor if the information is required in the performance of the individual's official duties.

XI. Property Assessment Appeals

A. Value Increase Restrictions

Section 26 of HEA 1454 amends Ind. Code § 6-1.1-15-1.2 to address assessment appeals, including additional restrictions for assessment appeals. This section specifies that a determination of an appealed assessed value:

(1) by a county or township official resulting from an informal meeting; or

(2) by a county board resulting from an appeal hearing

may be less than or equal to the original appealed assessed value at issue, but may not exceed the original appealed assessed value at issue. However, an increase in assessed value that is attributable to substantial renovations, new improvements, zoning changes, or a change in use is excluded from these limitations. These restrictions only apply to appeals before the PTABOA.

B. Appraisals

On May 4, 2023, Governor Eric J. Holcomb signed into law House Enrolled Act 1499-2023 ("HEA 1499"). Section 3 of HEA 1499 amends Ind. Code § 6-1.1-15-1.2 by specifying that if a taxpayer presents an appraisal to the PTABOA meeting specified requirements, the appraisal is presumed to be correct. In order to be presumed correct, the submitted appraisal must be:

(1) Prepared by a certified appraiser in compliance with the Uniform Standards of Professional Appraisal Practice to determine the market value in use;

(2) Addressed to the property owner or the assessor's office;

(3) Commissioned for the purposes of the assessment appeal; and

(4) Marked with an effective date that is the same date as the date of the assessment that is the subject of the appeal.

Section 3 also provides if the PTABOA disagrees with the taxpayer's appraisal, the PTABOA may seek a review of the appraisal or obtain an independent appraisal. However, after the assignment of value, the parties retain their rights to appeal to the Indiana Board of Tax Review.

C. PTABOA Quorum

Section 47 of HEA 1454 amends Ind. Code § 6-1.1-28-1 by removing the requirement that the majority of a PTABOA, in order to constitute a quorum for official business, must include at least one certified level two or level three assessor-appraiser.

XII. Restricted Address Program

On April 20, 2023, Governor Eric J. Holcomb signed into law House Enrolled Act 1578-2023 ("HEA 1578"), and on May 4, 2023, Governor Holcomb signed into law Senate Enrolled Act 314-2023 ("SEA 314"). Both HEA 1578 and SEA 314 amend provisions under Ind. Code § 36-1-8.5 regarding the restricted address program and the list of individuals that may restrict access to their home address from public property databases. As amended by HEA 1578 and SEA 314, the definition of "covered person" in Ind. Code § 36-1-8.5-2 is expanded to include any of the following (new categories in **bold**):

(1) A judge.

(2) A law enforcement officer.

(3) **An address confidentiality program participant.**

(4) A public official.

(5) The surviving spouse of a person described in subdivision (2) if the person was killed in the line of duty.

(6) An employee of the department of child services.

(7) A current or former probation officer.

(8) A current or former community corrections officer.

(9) **A regular, paid firefighter or a volunteer firefighter (as defined in Ind. Code § 36-8-12-2).**

(10) **Any person who resides in the same household as a person described in subdivisions (1) through (9).**

As provided in current law, a covered person who wants to restrict access to their home address from a public property database may submit a written request to the governmental unit that operates the public property database.

Contact Information

Questions may be directed to Jennifer Thuma, Deputy General Counsel, at jthuma@dlgf.in.gov.