STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE

INDIANA GOVERNMENT CENTER NORTH
100 NORTH SENATE AVENUE N1058(B)
INDIANAPOLIS, IN 46204
PHONE (317) 232-3777
FAX (317) 974-1629

Frequently Asked Questions

Auditor's Conference Spring 2018

August 20, 2018

DEDUCTION QUESTIONS

1. **When applying deductions to property owned by an LLC or organization, are we to require proof of membership from the applicant?**

With the exception of the homestead deduction, explained below, there is nothing in law or rule that addresses proof of someone filing for the deduction on behalf of the business entity that proves he or she is affiliated with the entity.

For the homestead deduction, IC 6-1.1-12-37(k) states that a "homestead" includes property owned by an entity such as an LLC (or more accurately, an entity that is not an individual, cooperative housing corporation, or trust) and in which the individual residing on the property is a shareholder, partner, or member of the entity that owns the property. Please note too that this subsection only applies if the property was eligible for the homestead deduction on March 1, 2009. Should the LLC-owned property fit these parameters, it may be appropriate to ask that the individual who resides on the property prove that he or she is a shareholder, partner, or member of the LLC because that is a requirement for receiving the homestead deduction under IC 6-1.1-12-37(k).

Please note that some deductions by their nature cannot be claimed by business entities. This includes deductions based on a particular quality of the applicant, such as the veterans deductions (applicant must be a veteran or surviving spouse of veteran), blind/disabled deduction (applicant must be blind or have a disability), and over 65 deduction (applicant must be over 65 or a surviving spouse). Please also note that per IC 6-1.1-12-2, a person cannot delegate authority for filing a mortgage deduction application except through an executed power of attorney, and that willfully making a false statement on the mortgage deduction application constitutes perjury.

2. **Is the sales disclosure form ("SDF") intended to be used as a homestead application even when no SDF is required? What is our responsibility to the assessor when we accept the SDF in this case? Is the assessor required to process the SDF?**

Indiana Code 6-1.1-12-44 (provided below) describes when an SDF can function as an application for certain deductions:

IC 6-1.1-12-44 Sales disclosure form serves as application for certain deductions; limitations

Sec. 44. (a) A sales disclosure form under IC 6-1.1-5.5:

(1) that is submitted:

(A) as a paper form; or

(B) electronically;

on or before December 31 of a calendar year to the county assessor by or on behalf of the purchaser of a homestead (as defined in section 37 of this chapter) assessed as real property;

(2) that is accurate and complete;

(3) that is approved by the county assessor as eligible for filing with the county auditor; and

(4) that is filed:

(A) as a paper form; or

(B) electronically;

with the county auditor by or on behalf of the purchaser;

constitutes an application for the deductions provided by sections 26, 29, 33, 34, and 37 of this chapter with respect to property taxes first due and payable in the calendar year that immediately succeeds the calendar year referred to in subdivision (1).

(b) Except as provided in subsection (c), if:

(1) the county auditor receives in a calendar year a sales disclosure form that meets the requirements of subsection (a); and

(2) the homestead for which the sales disclosure form is submitted is otherwise eligible for a deduction referred to in subsection (a);

the county auditor shall apply the deduction to the homestead for property taxes first due and payable in the calendar year for which the homestead qualifies under subsection (a) and in any later year in which the homestead remains eligible for the deduction.

(c) Subsection (b) does not apply if the county auditor, after receiving a sales disclosure form from or on behalf of a purchaser under subsection (a)(4), determines that the homestead is ineligible for the deduction.

To be used as a deduction for application, SDF must have been timely submitted to the county assessor, be accurate and complete, be approved by the county assessor as eligible for filing with the county auditor, and then be timely submitted with the county auditor. Therefore, if an SDF is not required or even used for the underlying transaction, the law does not allow it to be used as an application for deductions. The Department emphasizes that the assessor has to have approved the SDF before it would go to the auditor's office for processing any deductions off of it.

3. **I have a lady whose spouse passed away. She was never put on title to the real estate in 2008. There's a mortgage in 2008 in his name only. The property has now been put into her name by a survivorship affidavit. She's wanting to claim a mortgage deduction on the mortgage that's in his name only. Can she?**

One piece of information that is missing in this question is whether the decedent mortgagor assigned the mortgage to his wife prior to his death. In other words, did he transfer his rights and duties to the mortgage to his wife? Indiana Code 6-1.1-12-2 states that in applying for the mortgage deduction, the mortgagor must state any known assignees to the mortgage. It is conceivable, therefore, that if the decedent had somehow transferred the mortgage to his wife, then she would be the new mortgagor of the property and would therefore be eligible.

4. If a taxpayer failed to file their pink slip for the homestead credit way back when, and has now filed, can the auditor go back three years and refund the credit?

The Department's position has been that pulling the homestead deduction due to the pink form not being filed was not intended to be a punitive measure and therefore the auditor should reinstate the deduction once proof of residency has been provided.

5. Regarding the Geo-thermal Deduction:
   1) Are you allowed the Geo-thermal deduction if the home is burned down?
   2) How is the amount determined for the Geo-thermal deduction?

1) Assuming the geothermal deduction was validly in place on the assessment date before the house was burned down, then it could stay in place for that assessment date. See IC 6-1.1-12-45(a). Eligibility for the deduction for the following assessment date will likely depend on when the house can be rebuilt and how soon can a new geothermal system can be installed (which may also include a new IDEM certification).

2) Indiana Code 6-1.1-12-34(b) states as follows: "The amount of the deduction equals the remainder of: (1) the assessed value of the real property or mobile home with the geothermal heating or cooling device; minus (2) the assessed value of the real property or mobile home without the geothermal heating or cooling device."

6. How do we apply a 60% homestead to land only when we do not know what portion of the currently land AV that will be eventually allocated to the 1% bucket? For example, for pay 18, they have 15 acres assessed at $30,000 in the 2% bucket. The 1 acre AV (max) for the future home is not yet separated out in the 1% bucket. Shouldn't the 60% homestead be applied to only the 1 acre?

Indiana Code 6-1.1-12-37(p) provides that an individual may receive a homestead deduction on land which was vacant or had a dwelling that was not completely built as of the assessment date. This provision also provides that this land is to be considered a homestead for purposes of the supplemental deduction and the property tax caps. The Department believes that, because the land on which the dwelling will sit (i.e., the surrounding 1 acre) is considered the "homestead" under IC 6-1.1-12-37(p), the acre must be separated out from any "non-homestead" acreage and be given the 60% deduction amount as well as be placed in the 1% bucket.

So in the example, where the lot is 15 acres, 14 of those acres will remain in the 2% bucket and the 1 acre will be put into the 1% bucket and be given the homestead deduction amount. This is easier to do when construction has begun on the dwelling since the acre can be identified. Where there is no partially completed dwelling, local control governs as to which is the surrounding 1 acre to apply the homestead deduction on.

7. **How far back can an ineligible homestead be charged to a property owner? We had been given instruction by DLGF in 2014 that we could go back to then the statute was put into effect, which was 09 pay 10. Since then, we have also heard that we can only go back 3 pay years, Please clarify.**

House Enrolled Act 1273-2016 amended IC 6-1.1-36-17(b) to state, among other things, that the auditor may pursue ineligible homesteads within 3 years from when the taxes were first due.

8. **We had a taxpayer come into the office yesterday with a question about her husband's veteran's deduction. The couple lives in Virginia, have a homestead in Virginia so they understand that they cannot have a homestead here; however, her husband is a veteran and she would like the veteran's deduction to be applied to the property in Indiana. After some discussion with her, she stated that their property in VA already has a veteran's deduction on it and it is at 100%. Can they apply for a veteran's deduction here in Indiana as well or do they have to remove it in Virginia if they want to apply it here?**

There is no restriction in Indiana law that limits the veteran to receiving just one veterans' deduction in any state.

9. **We have a home owner who is active military stationed in Indiana. He owns the home and it is his principal place of residence while stationed in Indiana. However, he has a Florida driver's license and files his income taxes in Florida. He says the Soldiers and Sailors Act allows him to claim the homestead deduction without changing where he files his income taxes or his driver's license. I haven't been able to find anything on this. Are you familiar with this and can we allow the homestead deduction?**

The Department believes the taxpayer in question is referring to the Servicemember's Civil Relief Act ("SCRA," found at 50 U.S.C. §§3901-4043), which was signed by Congress in 2003. The SCRA, among other things, allows a servicemember to maintain his or her legal residence (or "domicile") in the state resided before entering active duty. In other words, the servicemember does not lose legal residence in a state when absent due to military orders. 50 U.S.C. § 4001. The SCRA also postpones any requirement that a state has to claim residency for a servicemember in active duty until 180 days after leaving active duty. 50 U.S.C. §3998(b).

Although the SCRA appears to be intended to identify domicile for income tax and personal property tax purposes, it may affect the homestead deduction because a person can only have a legal residence in only one state. A county auditor may require an individual to provide evidence that he is using his Indiana property as his principal place of residence. IC 6-1.1-12-37(j). As such, it is left to the discretion of the auditor whether to accept the servicemember's assertion that due to the SCRA he does not need to change his legal residence. Please note, however, that "legal residence" is not synonymous with "principal place of residence," which is defined in 50 IAC 24-2-5 as an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence.

10. **Is the homestead donated to a veteran deduction amount applied to the "gross assessed value" or the "net assessed" value?**

Indiana Code 6-1.1-12-14.5(b) states that this deduction is to be applied "from the assessed value of the individual's homestead." The terms "gross assessed value" and "net assessed value" are rarely used in Indiana Code. Regarding deductions specifically, "net assessed value" is only used in the calculation of the homestead supplemental deduction (i.e., the deduction is applied from the net assessed value of the property after applying the homestead deduction but before all other deductions). Likewise, the term "gross assessed value" is never used in IC 6-1.1-12. However, unless the statute qualifies what it means by "gross assessed value" (and it doesn't in IC 6-1.1-12-45), the term can be thought of as interchangeable with the term "assessed value."

Therefore, the Department believes the homestead donated to a veteran deduction is to be applied to the gross assessed value.

11. **If the individual filing for the Over 65 Deduction is 66 years of age and their spouse is 59 years of age, do they receive the full amount of the deduction even though they both are not 65? Both individuals are on the deed. There are no others on the deeded property.**

The Application of the Over 65 Deduction (state form 43708) includes the following statements: "For the Over 65 Deduction, the deduction amount equals the lesser of one-half the assessed value of the property or $12,480. However, where an applicant owns or is buying the property with joint tenants or tenants in common and not all the tenants are at least sixty-five (65) years of age, the deduction is to be reduced by a fraction. The numerator of the fraction is the number of tenants who are not sixty-five (65) years of age and the denominator is the total number of tenants. This reduction does not apply if the property is owned only by the applicant and the applicant's spouse." (Underline added.)

In addition, IC 6-1.1-12-9(e) states that if the property is owned by both spouses (i.e., "tenants by the entirety"), only one of the spouses needs to be 65 or older to receive the deduction. Therefore, where one spouse is 66 and the other is 59, and both are the only co-owners of the property, all else being equal, the eligibility requirements for the deduction have been met and the property can receive the full amount of the deduction.

12. **I have a patron who is a Disabled Veteran, she recently lost her husband whom was a Disabled Veteran as well. Can she receive both the Surviving Veteran Spouse Deduction along with her Disabled Veteran's Deduction?**

The surviving spouse of a veteran may receive the veterans deductions if the veteran satisfied the eligibility requirements of these deductions at the time of his or her death and the surviving spouse owns or is buying the property under contract at the time the deduction application is filed. The surviving spouse is entitled to the deduction regardless of whether the property for which the deduction is claimed was owned by the deceased veteran or the surviving spouse before the deceased veteran's death. To clarify, there is a deduction for the surviving spouse of a World War I veteran, per IC 6-1.1-12-16, and a surviving spouse receiving that deduction cannot also receive the partially disabled veterans deduction (IC 6-1.1-12-13). The Department believes this question is referring to the surviving spouse of a veteran receiving the partially and/or totally disabled veterans deduction (IC 6-1.1-12-13 & 14).

The Department believes it is possible a surviving spouse can receive both her deceased spouse's veterans deduction in addition to her own veterans deduction, provided both eligibility requirements are met. A way to think about it is that the surviving spouse is "standing in the shoes" of the deceased veteran.

13. **Rather than eliminating the reapplication requirements set forth in HEA 1450-2017, build upon it! The county auditor can work with the county clerk to acquire marriage and divorce records. The county auditors can notify the taxpayer(s) in writing of their reapplication requirement. The information gained in the new application is necessary to ensure the spouse doesn't have a deduction filed elsewhere. If a married person buys a home and the home is only titled in one name, it is required that their spouse certifies on the application if the homestead is requested. If the reapplication is eliminated it creates a discrepancy that HEA 1450-2017 cleared up in the above example, because the person was married at the time of purchase their spouses information was required, however, if that person was not married at the time of purchase and later marries their spouses information is not required? Don't eliminate the reapplication requirement, outline a better process.**

The Department believes the reason for the insertion of language in HEA 1104-2018 eliminating this refiling requirement is that it would unduly burden taxpayers who have a homestead deduction and marry but their spouse does not themselves have a homestead deduction on any of their property. Here, the taxpayer who did not refile would subsequently lose the deduction even though doing so would not be serving the purpose of this refiling requirement, which is to ensure that both spouses do not have their own homestead deductions. The Department nevertheless encourages working with your legislators on making any needed improvements to this process.

TAX INCREMENT FINANCE QUESTIONS

1. **I understand that new TIFs would not have any excess for quite a long time. However, is there ever a time that long established TIFs ever return any excess AV?**

No. The amount of Excess AV to pass through is at the discretion of the Redevelopment Commission ("RDC"). Counties and city/towns are encouraged to work with the RDCs, as partners within their communities, to learn more about the RDCs' short term and long term financial obligations and goals. Together both groups may be able to identify opportunities to consider excess AV.

2. **What constitutes "excess AV" for TIF districts? Are there any written guidelines redevelopment commissions use that would determine any A/V over a "specified" increase must be returned? Or is the determination solely at the discretion of the redevelopment commission?**

The amount of Excess AV to pass through is at the discretion of the Redevelopment Commission ("RDC"). Counties, cities, towns, and RDCs should review IC 36-7-14-39(b)(3) and IC 36-7-14-39(b)(4) for statutory discussion of how excess AV is determined.

LOCAL INCOME TAX QUESTIONS

1. **If the DLGF is considering a file for circuit breaker rates, will there also be a file for excise equivalency rates for LOIT/LIT levy freeze or former levy freeze counties? For some of our tax software we need the equivalency rates prior to entering circuit breakers.**

The Department will take it under consideration for 2019 pay 2020.

2. **What were qualifications to receive supplemental local income tax distributions?**

Annually the State Budget Agency ("SBA") produces two estimates of the following year's LIT distribution prior to certifying the actual amount on November 1. Although there are a number of factors used in the certification, the distribution amount is largely based on the county's trust balance account. The final balance is not certified until December 31 and a county's trust balance account may increase or decrease after November 1. If the final trust account balance exceeds 15% of a year's certified distributions, a county will be eligible to receive supplemental distribution in May.