STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE

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FREQUENTLY ASKED QUESTIONS
COUNTY AUDITORS'CONFERENCE FALL 2012

1.) Can you discuss the Vacant Building Deduction and which county official is responsible for overseeing it?

The vacant building deduction is governed by IC 6-1.1-12.1 and State Form 53179. This form should be used for assessments from March 1, 2007 and after and must be filed with the county auditor of the county in which the property is located. The form must be filed between March 1 and May 10 of the filing year unless an extension of up to 30 days has been granted in writing. The building must have been unoccupied for at least one year prior to the filing of the application and zoned for commercial or business use. A copy of the approved Form SB-1/Real Property, resolution from the designating body, and Form CF-1/Real Property must be attached to the application. Under IC 6-1.1-12.1-4.8, the taxpayer must show how the investment in the vacant building will increase assessed value and create jobs or retain employees in the taxing jurisdiction.

2.) If a company doesn't file a CF-1 by May 15, who makes the decision that it is not in compliance – the auditor or the designating body? What is the correct way to apply the deduction to Layer 1, year 2? Do I keep using the same amount of percentage complete amount for following years and calculate the additional assessed value amount to Layer 2 or will the figures change each year? On what do I rely the assessor to give me each year to make this calculation?

Assuming the CF-1/Real Property is the form at issue, there are two types of compliance that could be considered when answering this question. The designating body has the sole authority to determine if the taxpayer is compliant with his Form SB-1/Real Property (Statement of Benefits); however, the determination of this type of compliance occurs <u>after</u> the Form CF-1/ Real Property has been filed. In the question above, the form has not been filed; therefore the auditor is not determining compliance with the Statement of Benefits, but determining if the taxpayer has complied with the process of obtaining the deduction according to IC 6-1.1-12.1-5.1(b). The auditor has the authority to deny the deduction if the proper paperwork if not filed. This denial results from the taxpayer not being in compliance with the statutes and has nothing to do with the process where the designating body determines compliance with the Statement of Benefits.

The phase "percentage complete" in the question implies that the building will have an assessment for the current assessment year for the portion of the building finished with the remainder of the building being first assessed the following year. It is correct that there will be "Layer #1" representing an abatement for the current year's qualifying assessment and "Layer #2" representing an abatement for the remaining portion. Each layer will have an assessed value that qualifies for an abatement deduction in its first year and that amount will change throughout the abatement cycle as the assessed value changes as a result of the general reassessment, annual trending, or appeals. The "percentage complete" number will not be very helpful in determining the deductions in the future but will serve only to explain the layers should questions arise.

The Department of Local Government Finance recommends that each auditor obtain a hard copy of the Property Record Card ("PRC") each year for every taxpayer receiving a tax abatement deduction. Many times, the PRC contains the assessment information necessary for the auditor to determine the assessed value that qualifies for an abatement deduction. Form 11s are also helpful. If questions arise after reviewing the PRC, the auditor should consult with the assessor to determine a breakdown of what assessed valuation qualifies for the deduction.

3.) When a company is not in compliance and moves out of a building, can a new company move in and take over the previous company's abatement benefits?

Indiana Code 6-1.1-12.1-5(g) states that a tax abatement is not affected by a change of ownership if the new owner continues to use the property in a manner that satisfies the designating body and if the new owner files a deduction application. The answer is, "Yes, the new owner could receive the remainder of the current deduction cycle." It is also important to understand that the cycle would not restart at Year #1.

4.) Can a disabled veteran who does not own property receive and use a veteran's deduction for excise taxes? Why should the auditor's office be burdened with related vehicle excise tax issues?

A veteran must own or be buying property under contract to qualify for a veteran's deduction. Only if a vet qualifies for the deduction may he or she apply an unused portion of that deduction to excise taxes. A vet who owns no property or is not buying property under contract is not eligible for the deduction and thus has nothing to apply toward excise taxes. The auditor is tasked with determining a person's eligibility for property tax deductions. Eligibility for the veteran's deduction is a prerequisite for applying an unused portion of the deduction to excise taxes.

5.) Do you have to notify the property owner in writing when removing deductions other than the homestead deduction?

Generally, no. With regard to the Enterprise Zone Investment Deduction Application (Form EZ-2), the auditor is required to make a determination on the form.

Before removing a homestead deduction due to a taxpayer's failure to return a Verification Form (Pink Form), the auditor must provide notice to the taxpayer. A recent, unrelated legislative change provides that going forward, an auditor must notify a taxpayer of his or her right to appeal the auditor's determination to deny a homestead deduction. This implies that the auditor must notify a taxpayer when the auditor has determined that he or she is ineligible for the homestead deduction.

6.) When removing the homestead deduction for non-residency, can you also remove all other deductions related to residency at that time?

For purposes of the homestead verification process, if a Verification Form (Pink Form) is not returned, only the homestead deduction could potentially be removed for that reason. As a general matter, if an auditor determines that a property owner is ineligible for one or more deductions he or she is receiving, the auditor may remove those deductions simultaneously, if appropriate.

7.) When every possible attempt has been made to obtain a homeowner's pink form but the homeowner fails to return the form, we have decided to pull the homeowner's homestead deduction. If the homeowner comes in to complain, do we have the right and ability to leave the homestead deduction off until the following year?

Taxpayers have until December 31, 2012 to return the Verification Form (Pink Form). No deduction should be removed until the deadline has passed and the auditor has given notice to the taxpayer that his or her homestead deduction is subject to revocation because of the failure of the taxpayer to return the form. If the deduction is removed and the taxpayer subsequently provides proof of his or her eligibility, the deduction <u>must be reinstated for 2012 pay 2013</u>. If the Pink Form is not returned and the auditor believes that the taxpayer is ineligible for the deduction and the taxpayer has not otherwise offered proof of his or her eligibility, the auditor has the discretion to remove the homestead deduction after notice is provided to the taxpayer.

8.) What do we do if we have a fraudulent signature on a pink form?

If a Pink Form is not correctly or completely filled out or signed, the auditor has discretion to remove the taxpayer's homestead deduction after providing notice to the taxpayer.

9.) How can we validate a homestead deduction in a situation where an elderly mother with no valid driver's license or voter registration card has her mail addressed and sent to her daughter, who is her power of attorney?

Although an auditor <u>may</u> limit the evidence of eligibility to a driver's license, voter registration card, and state income tax return, the law does not prohibit the auditor from requesting additional information or evidence to verify a person's eligibility for the homestead deduction. In this situation, the auditor may want to inquire whether the taxpayer can offer any evidence that the mother's property is in fact her principal place of residence, even if that evidence does not include a driver's license or voter registration card. Perhaps a state income tax return or related documentation would suffice. Whatever documentation convinces the auditor that the property is the taxpayer's principal place of residence is sufficient.

10.) Must a homeowner use his or her property as a primary residence to receive the homestead deduction?

Yes. A "principal place of residence" means an individual' true, fixed, permanent home to which the individual has the intention of returning after an absence.

11.) Can a husband and wife that are legally separated but living within the same county each receive a homestead deduction? Each individual holds title to the property.

Because the couple is not actually divorced, the couple is entitled to only one homestead deduction. If the couple legally divorces, then each former spouse could potentially receive his and her own homestead deductions.

12.) Can the DLGF's determination of which funds are "protected" from circuit breaker loss allocation be identified on Budget Order?

The DLGF will consider adding such a report to the Budget Order. In the meantime, you can identify such funds where the number 8 is the third digit of the fund number.

13.) If you allow a property owner the 1% tax cap even without a homestead being filed, is that change effective next tax year, current tax year, or do you have to go back three years and credit?

The auditor would have to go back and credit the 1% cap.