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A GUIDE TO THE COUNTY AUDITOR'S REVIEW OF REAL PROPERTY EXEMPTION APPLICATIONS

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Introduction

Ohio Revised Code 5715.27 requires county auditors to review exemption applications for certain types of property within the auditor's county. The properties for which the auditor is responsible for granting exemption include:

- A public road or highway;
- Property belonging to the federal government of the United States;
- Additions or other improvements to an existing building or structure that belongs to the state or a political subdivision, as defined in section 5713.081 of the Revised Code, and that is exempted from taxation as property used exclusively for a public purpose.

This bulletin is presented as a general guide to assist auditors in understanding their roles in the exemption process. It is important to note that the law provides auditors the authority to review only a limited subset of exemption applications. *All applications received by an auditor that do not involve the types of properties listed above shall be forwarded to the Tax Commissioner for review.*

Notifying the Board of Education

(R.C. 5715.27(B))

The board of education of any school district may request a county auditor to provide it with notification of applications for exemption from taxation for property located within that district. If a board of education has requested notification from the auditor, then the auditor must send to the board of education of the affected school district monthly reports of applications that have been filed with the auditor for review. The auditor is not responsible for providing notice for applications that will be forwarded to the Tax Commissioner for review. The notice must be mailed by the 15th day of the month following the end of the month in which the auditor received an application for exemption and the notice must include:

- The name of the property owner or applicant;
- The address of the property;
- The auditor's parcel number.

Even if a board of education has previously requested that the Tax Commissioner provide notice of exemption application filings, it must provide the auditor with a separate notice. Finally, the applications, complaints against continuing exemption, and documentation relating to any determinations are public records.

When May an Application be Considered?

(R.C. 5715.27(C) and (D))

If no school board has requested notice of applications, the auditor may issue a decision regarding an application at any time. If a school board has requested notice of applications, and the auditor has

provided such notice in the month following the receipt of the application, the affected board of education may file a statement challenging the application at any time prior to the first day of the third month following the end of the month in which the application was received. Therefore, the auditor must not grant the application or hold a hearing regarding the application prior to the first day of the third month after the application was received, unless the auditor receives a written waiver. As an example, an affected school board has requested of the auditor that it receive notice of exemption applications. An application is received in January. The auditor must provide that notice to the board of education by February 15. After receipt of the notice, the board of education may file a statement of its intention to participate in the case no later than March 31. If an affected school board has not requested of the auditor that it receive notice of exemption applications, and an application is received in January, no notice must be provided at any time.

The school board's statement entitles it to submit evidence and to participate in any hearing on the property. It also vests the school board with a right to appeal the auditor's decision. The auditor is not required to hold a hearing, but is required to accept any evidence offered by the affected school district or the applicant. If a hearing is held, the board of education of the affected school district that has filed a statement has a right to participate.

GENERAL GUIDELINES AND JURISDICTIONAL REQUIREMENTS FOR REVIEWING EXEMPTION APPLICATIONS

Who may file the Exemption Application? *(R.C. 5715.27(A))*

One of the most common jurisdictional errors encountered in exemption applications involves who is legally authorized to file an exemption application. Ohio law authorizes only the following parties to file exemption applications:

- The legal owner of the property
- A vendee in possession of the property under a purchase agreement or land contract
- The beneficiary of a trust that holds title to the property
- A lessee of the property where the initial term of the lease is at least thirty years

If a party other than one authorized by law files the application for exemption, the application must be dismissed for lack of jurisdiction.¹

Treasurer's Certificate *(R.C. 5713.08)*

The only acceptable proof of payment of taxes is the treasurer's certificate located on the last page of the application. Copies of receipts, tax bills, or other proof of payment in lieu of the treasurer's certificate are not acceptable.

¹ Ohio law provides an exception to this rule for tax increment financing and other similar incentive exemptions which may be filed by the political subdivision that created the exemption. However, none of those applications fall under the auditor's jurisdiction.

What taxes must be paid before the Auditor can consider the request for exemption?

(R.C. 5713.08(C) and R.C. 5713.081(A))

Taxes that may not potentially be remitted after consideration of the case must be paid before the exemption application can be considered on its merits. The authority to remit taxes is limited to the three years preceding the year in which the application is filed, but in every case, the taxes for the year the owner acquired title to the property must be paid. The auditor will also have jurisdiction over a case if the nonremittable taxes are subject to a valid delinquent tax contract.

Example #1: The applicant acquires title to the property on February 1, 2019 and files the exemption application on March 1, 2019. The application can be dismissed without sending the letter because it is not possible for the applicant to obtain a treasurer's certificate within sixty days showing that 2019 taxes are paid.

Example #2: The applicant purchased property in 2014 and immediately began using it for an exempt purpose but did not file an exemption application until 2019. Taxes are not eligible for exemption or remission if they were assessed for years prior to the three years preceding the year the application was filed. Therefore, in this example, taxes for 2015 and prior years must be paid. (Only taxes assessed in the year the application is filed plus the three preceding years may be remitted, but in no case can taxes assessed in the year of acquisition by the owner or any prior year be remitted). In this case the treasurer's certificate must show that taxes are paid in full through 2015 and prior years because those taxes are no longer eligible for remission.

If the treasurer's certificate does not indicate that the required taxes are paid or subject to a contract, the auditor must send the applicant a letter setting forth the years for which taxes must be paid and requesting a corrected treasurer's certificate as proof of payment within sixty days of the date the letter is mailed. The letter should warn the applicant that, unless the corrected certificate is received by the auditor within the required time period, the application will be dismissed for lack of jurisdiction. Note that a postmark made within the sixty-day period is insufficient to establish a timely filing of the corrected certificate. (See Example #1 for an exception to this noticing rule.)

The letter may be on the auditor's letterhead and should contain language similar to the following if the letter is addressing unpaid taxes for the year title was acquired:

Under Ohio Revised Code section 5713.08, taxes, penalties and interest for the year the applicant took title to the property and prior years must be paid before the county auditor may consider the application on its merits. Your application indicates you acquired the property in (tax year), but the treasurer's certificate on that application indicates that taxes, penalties, or interest for that year are unpaid (or the treasurer's certificate is blank or missing).

Please be informed that you have sixty days from the date of this letter to provide our office with a new treasurer's certificate showing the required amounts have been paid. The corrected treasurer's certificate must be received (not postmarked) by this office within this time period, or your application will be dismissed. The new certificate can be obtained from the county treasurer.

If the letter is addressing unpaid taxes outside the three-year remission period, it should contain language similar to the following:

Our office has received your application requesting exemption of real property from taxation. Under Ohio Revised Code section 5713.08, the county auditor must have a complete treasurer's certificate indicating that taxes, penalties and interest for the year the applicant acquired the property and prior years are paid before he has jurisdiction to consider the application on its merits. Additionally, under R.C. 5713.081, the county auditor shall not remit more than three years' taxes, penalties, and interest from the year in which the exemption application was filed. Your application was filed in (INSERT YEAR), however, the treasurer's certificate does not indicate that taxes, penalties and interest have been paid in full through the requisite tax year, (YEAR NEEDED).

Please be informed that you have sixty days from the date of this letter to provide our office with a new treasurer's certificate showing the required amounts have been paid. The treasurer's certificate must be the prescribed certificate which appears on page 4 of DTE Form 23, Application for Real Property Tax Exemption and Remission. If the new treasurer's certificate is not submitted in the correct format, or if it is not received by this office (not postmarked) within the sixty-day time period, your application will be dismissed. The new certificate can be obtained from the county treasurer's office, or you may download it from the Ohio Department of Taxation's website at www.tax.ohio.gov.

[Please provide copies of all submissions to Attorney <attorney name> for the (School District) Board of Education.]

Taxes for land taken for public roads or highways only need to be paid through the date of acquisition if acquired by the state of Ohio. The Ohio Department of Transportation files for exemption of its property using an abbreviated exemption application (DTE Form RE30) which includes a column to report the date of acquisition and another to report the date through which taxes are paid. If the taxes are not yet known, as illustrated in Example #1, the state may pay an estimate of the taxes based on the most recent year for which taxes have been calculated which amount is accepted as payment for the current year. This provision applies only to property owned by the state of Ohio, and, in the context of exemption applications under the auditor's jurisdiction, only to state-owned public roads and highways.

There is no tax payment requirement for property owned by the federal government due to the doctrine of federal immunity, which holds that the states cannot tax property owned by the federal government.

Are exemptions available for partial years?

(R.C. 323.11 and R.C. 5713.08(D))

Generally, no. Real property tax exemptions are determined based on the use of the property on January 1st of the tax year and are granted or denied on a full-year basis unless Ohio law authorizes a partial year exemption for the particular applicant, e.g., property owned by the state of Ohio or the federal government. Exemptions for property owned by the federal government begin on the date the United States of America acquires the property and end on the day following the day the property is transferred to another owner. Exemption for property owned by the state of Ohio begins on the day

the property is acquired or the day following the day any private use of the property has ceased, whichever date is later. Consequently, each successful application must include a detailed statement of how the property was used for an exempt purpose for any partial year and on January 1st of any full year for which exemption is requested.

Factors to Consider in Reviewing an Exemption Application

The review of certain applications by the county auditor is intended to facilitate the approval of simple applications that are likely to be granted. Therefore, it is anticipated that most of the exemption applications considered by the auditor will likely be granted. Nevertheless, an auditor should ensure that the property meets the definitional sections and the requirements for exemption. For example, the auditor should ensure that the property is used for the purpose that is expressed in the application and is owned by the entity required by the exemption. Some guidelines for the requirements for the exemption of property to be considered by the county auditor are provided below.

Public Purpose *(R.C. 5709.08)*

The auditor is responsible for reviewing requests for exemption of public roads or highways, property owned by the federal government of the United States, and additions to already-exempt buildings owned by the state or a political subdivision. Note that the auditor does not have jurisdiction to consider an application for exemption of a new public building or any newly acquired public property other than that used or intended to be used as a public road or highway. Public use exemptions are generally considered pursuant to Ohio Revised Code section 5709.08. There are three prerequisites which all must be met in order for property to qualify for a public use exemption:

1. The property must be public property (i.e., owned by a state or a political subdivision of the state);
2. The use must be for a stated purpose that benefits the public;
3. The property must be used exclusively for a public purpose.

Again, the simple public purpose exemption is the only exemption that falls under the county auditor's jurisdiction. Applications for public property that is leased or that is not currently being used for a public purpose should be forwarded to the Tax Commissioner as should all tax increment financing and enterprise zone exemption applications.

Issuing the Determination *(R.C. 5715.27; R.C. 5717.02(B))*

If the auditor determines that the tax exemption should be granted, the tax list and duplicate must be corrected accordingly. Sample language for a simple grant is provided in the appendix to this bulletin. The auditor must give written notice of the determination to all who participated in the exemption application. In other words, if the board of education participated in the exemption process by timely filing a statement, it should receive notice of the auditor's determination. A party's appeal rights run from the date the auditor's determination is received by the appealing party. In order to confirm that an appeal is timely filed, the date upon which the determination was received is critical. Therefore, in the event the decision is a denial in whole or part or if a board of education is

participating, the decision should be sent by certified mail, with some method of identifying the date of receipt (i.e., return receipt requested). The statute also requires notice to the county treasurer if a tax certificate has been sold under R.C. 5721.32 or 5721.33 with respect to the property for which an exemption has been requested. The auditor may also make different determinations for years during which the application was pending if the auditor determines the use of the property or other relevant facts changed during those years.

NOTE: If the county auditor is in possession of an email address for the applicant the auditor may choose to send any notices the auditor is required to send by email and regular mail instead of by certified mail, however this is not recommended for final determinations as outlined above.

Complaints against Continuing Exemption
(R.C. 5715.27(E))

Complaints against the continued exemption of real property are to be filed with the county auditor. If the auditor determines the property is no longer eligible for exemption, the auditor shall restore the property to the tax list. If the auditor elects not to issue a finding on a complaint, the auditor must then forward the complaint to the Tax Commissioner. However, if the complaint is filed against the continued exemption of property that is used for one of the purposes over which the auditor has jurisdiction, then the auditor must issue a decision on that complaint.

Complaints against continuing exemption may be filed by any individual or entity authorized to file a complaint with the board of revision pursuant to R.C. 5715.19. Like an application for exemption, a complaint against exemption must be filed before December 31 in the tax year for which exemption is questioned. The auditor's duties with respect to a complaint against continuing exemption are similar to the duties with respect to the original application for exemption. The auditor must confirm that the property is used in the manner contemplated by the original exemption. Should the auditor conclude that exemption is no longer proper, the tax list and duplicate must be corrected. The auditor should provide notice of the decision confirming or denying continuing exemption to the persons who participated in the complaint against continuing exemption in the same manner as determinations from applications for exemption are issued (certified mail, with some method of identifying the date of receipt). If a tax certificate has been sold under R.C. 5721.32 or 5721.33, the auditor must also notify the county treasurer.

Auditor's Responsibilities should Determination be Appealed
(R.C. 5717.02)

Any party to the application process before the auditor may appeal to the Board of Tax Appeals pursuant to R.C. 5717.02. The appellant must file a copy of its notice of appeal with the auditor and with the Board of Tax Appeals within sixty days of receiving the auditor's decision. If filed by certified mail, express mail, or authorized delivery service, the date of mailing is deemed to be the date of receipt. Upon the filing of the notice of appeal, the auditor is required to certify to the Board of Tax Appeals a transcript of the record of the proceedings held. The auditor's determination letter should explain why the exemption was granted (or denied). Should the auditor wish to defend the determination before the Board of Tax Appeals, he may do so personally, or he may seek representation from the county prosecuting attorney. Note that appeals of decisions relating to real property tax exemption may only be taken to the Board of Tax Appeals.

APPENDIX

This is the final determination of the county auditor on an application for the exemption of real property from taxation. The county auditor finds that the real property described above is exempt from taxation under R.C. (5709.08 or applicable ORC).

The real property described above will be entered upon the list of property in the county which is exempt from taxation for tax year (years exempt). All taxes, penalties and interest paid for this tax year will be remitted in the manner provided by R.C. 5715.22. The subject property shall remain on the exempt list until either the county auditor or the Tax Commissioner restores the property to the tax list.

THIS IS THE FINAL DETERMINATION WITH REGARD TO THIS MATTER. UPON EXPIRATION OF THE SIXTY-DAY APPEAL PERIOD PRESCRIBED BY R.C. 5717.02, THIS MATTER WILL BE CONCLUDED AND THE FILE APPROPRIATELY CLOSED.