

October 16, 2014

The Honorable Keller J. Blackburn
Athens County Prosecuting Attorney
Athens County Courthouse
1 South Court Street
Athens, Ohio 45701

SYLLABUS:

2014-037

1. A county auditor is required to verify the income information provided by an applicant for a reduction of real property taxes under R.C. 323.152. A county auditor is required to verify the income information of an applicant even when the applicant is not required to file an Ohio income tax return under R.C. 5747.08.
2. A county auditor is not required to use the web-based income verification system provided by the Tax Commissioner to verify the income information provided by an applicant for a reduction of real property taxes under R.C. 323.152. A county auditor may complete the income verification using any reasonable means, including examination of any tax or financial records relating to the income of the applicant as stated on the application.
3. Pursuant to R.C. 323.153(C)(4), a county auditor is required to mail a continuing application each year to each person receiving a reduction of real property taxes under R.C. 323.152. While the continuing application is used to report changes in information, including total income, that was previously reported to the auditor and that is relative to the reduction in taxes on the property, a county auditor is not required to separately verify on a recurring annual basis the income of a person receiving a reduction of real property taxes under R.C. 323.152.



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Opinions Section
Office 614-752-6417
Fax 614-466-0013

30 East Broad Street, 15th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

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OPINION NO. 2014-037

The Honorable Keller J. Blackburn
Athens County Prosecuting Attorney
Athens County Courthouse
1 South Court Street
Athens, Ohio 45701

Dear Prosecutor Blackburn:

You have requested an opinion concerning the process for determining an applicant's eligibility for a reduction of real property taxes under R.C. 323.152, commonly known as the "homestead exemption." You ask several questions, which we have restated and reordered as follows:

1. Do R.C. 323.151-.159 mandate that a county auditor verify the income provided by an applicant on the homestead exemption application by "examining any tax or financial records relating to the income of the applicant as stated on the application for the purpose of determining eligibility for the exemption or a possible violation of division (D) or (E) of [R.C. 323.153]"?
2. If an applicant for the homestead exemption did not file an Ohio tax return, does a county auditor have a mandatory duty to verify the income provided on the homestead exemption application?
3. If yes to question 2, how does a county auditor accomplish the verification—using the Tax Commissioner's portal or by some other means?
4. If yes to question 1, is a county auditor required to use the portal provided by the Tax Commissioner in order to verify income, or may a county auditor examine the records provided by the applicant?

5. If yes to question 1, must the verification be done annually?
6. Does a county auditor have a duty to verify the income provided on the homestead exemption application only if independent information comes to a county auditor's attention bringing into question the veracity of the income information provided on the application?
7. If the duty to verify the income is not mandatory, what are the circumstances under which a county auditor may verify the income provided on the homestead exemption application?

Homestead Exemption: Reduction of Real Property Taxes under R.C. 323.152

R.C. 323.152 authorizes a county auditor to reduce real property taxes on a homestead as follows:

In addition to the reduction in taxes required under [R.C. 319.302], taxes shall be reduced as provided in divisions (A) and (B) of this section.

(A)(1)(a) Division (A)(1) of this section applies to any of the following persons:

- (i) A person who is permanently and totally disabled;
- (ii) A person who is sixty-five years of age or older;
- (iii) A person who is the surviving spouse of a deceased person who was permanently and totally disabled or sixty-five years of age or older and who applied and qualified for a reduction in taxes under this division in the year of death, provided the surviving spouse is at least fifty-nine but not sixty-five or more years of age on the date the deceased spouse dies.

(b) Real property taxes on a homestead owned and occupied, or a homestead in a housing cooperative occupied, by a person to whom division (A)(1) of this section applies shall be reduced for each year for which an application for the reduction has been approved. The reduction shall equal one of the following amounts, as applicable to the person:

(i) If the person received a reduction under division (A)(1) of this section for tax year 2006, the greater of the reduction for that tax year or the amount computed under division (A)(1)(c) of this section;

(ii) If the person received, for any homestead, a reduction under division (A)(1) of this section for tax year 2013 or under [R.C. 4503.065(A)] for tax year 2014 or the person is the surviving spouse of such a person and the surviving spouse is at least fifty-nine years of age on the date the deceased spouse dies, the amount computed under division (A)(1)(c) of this section. For purposes of divisions (A)(1)(b)(ii) and (iii) of this section, a person receives a reduction under division (A)(1) of this section or under [R.C. 4503.065(A)] for tax year 2013 or 2014, respectively, if the person files a late application for that respective tax year that is approved by the county auditor under [R.C. 323.153 or R.C. 4503.066].

(iii) If the person is not described in division (A)(1)(b)(i) or (ii) of this section and *the person's total income does not exceed thirty thousand dollars*, as adjusted under division (A)(1)(d) of this section, the amount computed under division (A)(1)(c) of this section. (Emphasis added.)

Your questions concern the “total income” described in R.C. 323.152(A)(1)(b)(iii). “Total income” is “Ohio adjusted gross income of the owner and the owner’s spouse for the year preceding the year in which application for a reduction in taxes is made.” R.C. 323.151(C). You ask whether, how, and how often a county auditor is required to verify the “total income” reported by an applicant for the homestead exemption. The procedures governing administration of the homestead exemption are set forth in R.C. 323.153. To obtain a reduction in real property taxes under R.C. 323.152, the owner of a homestead must file an application with the county auditor of the county in which the owner’s homestead is located. R.C. 323.153(A). The original application must be in the form of a signed statement and comport with the filing timelines set forth by statute. R.C. 323.153(A)(3).

The statement shall be on a form, devised and supplied by the tax commissioner, which shall require no more information than is necessary to establish the applicant’s eligibility for the reduction in taxes and the amount of the reduction.... The form shall contain a statement that conviction of willfully falsifying information to obtain a reduction in taxes or failing to comply with division (C) of this section results in the revocation of the right to the reduction for a period of three years. In the case of an application for a reduction in taxes for persons described in division (A)(1)(b)(iii) of section 323.152 of the Revised Code, the form shall contain a statement that signing the application constitutes a delegation of authority by the applicant to the tax commissioner or the county auditor, individually or in consultation with each other, to examine any tax or financial records relating to the income of the applicant as stated on the application for the purpose of determining eligibility for the exemption or a possible violation of division (D) or (E) of this section.

Id. (emphasis added). See generally 2007 Op. Att’y Gen. No. 2007-021, at 2-213 to 2-214.

Duties and Responsibilities of County Auditor in Administering the Homestead Exemption

No provision in R.C. 323.151-.159 sets forth an explicit requirement that a county auditor verify the income information provided by an applicant for the homestead exemption. Rather, the provisions set forth more general duties and responsibilities of a county auditor. See, e.g., R.C. 323.153(A) (an “owner shall file an application with the county auditor of the county in which the owner’s homestead is located”); R.C. 323.153(A)(3) (the application “form shall contain a statement that signing the application constitutes a delegation of authority by the applicant to the tax commissioner or the county auditor, individually or in consultation with each other, to examine any tax or financial records relating to the income of the applicant as stated on

the application for the purpose of determining eligibility for the exemption or a possible violation”); R.C. 323.153(B) (concerning late applications, “[i]f the county auditor determines the information contained in the late application is correct, the auditor shall determine the amount of the reduction in taxes to which the applicant would have been entitled”); R.C. 323.153(C)(3) (“[i]f the county auditor or county treasurer discovers that the owner of property not entitled to the reduction in taxes under [R.C. 323.152(B)] failed to notify the county auditor...”). In sum, R.C. 323.153 establishes the county auditor as the recipient of homestead exemption applications; requires a delegation of authority to a county auditor to examine tax or financial records related to the income of applicants; and contemplates that the county auditor will determine whether information on a late application is correct or discover that a homestead exemption recipient failed to notify the auditor of a change in income.

As a general matter, a county auditor is considered to be a ministerial officer who performs ministerial duties, *see* 2009 Op. Att’y Gen. No. 2009-033, at 2-218. Yet the duties and responsibilities ascribed to the county auditor by R.C. 323.153, taken as a whole, support the conclusion that a county auditor is expected to exercise his discretion in administering the homestead exemption under R.C. 323.153. *See generally Kloeb v. Mercer Cnty. Comm’rs*, 4 Ohio C.C. (n.s.) 565, 569 (App. Mercer County 1903) (a county auditor “does not act as a mere machine, without consciousness, duty, or responsibility, only to place his signature to warrants which will cause public moneys to leave the public treasury; he is not a mere automaton, there for the purpose of writing his signature to warrants on the public treasury when the button is touched”); 2012 Op. Att’y Gen. No. 2012-040, at 2-354 (“[w]e have further emphasized that the ‘paramount objective’ of a county auditor in performing his duties, including the duty to issue warrants authorizing disbursement of moneys from the county treasury to a county agency, is to ‘accurately and independently’ account for the moneys of the county agency and to ensure that moneys of a county agency are ‘correctly deposited’ into the appropriate fund and ‘legally disbursed therefrom’” (quoting 2002 Op. Att’y Gen. No. 2002-005, at 2-25)). In the administration of the homestead exemption, that discretion takes the form of determining whether the income information an applicant provides on her application is accurate. In order to make that determination, a county auditor is required by the Tax Commissioner to independently verify the income reported by an applicant.

Authority of Tax Commissioner

To support this conclusion and more fully answer your question, we now turn to the Tax Commissioner’s authority to require a county auditor to verify the income information of homestead exemption applicants. The Tax Commissioner’s authority to issue instructive tax bulletins is found throughout Ohio law. *See* R.C. 5715.28 (“[t]he tax commissioner shall decide all questions that arise as to the construction of any statute affecting the assessment, levy, or collection of real property taxes, in accordance with the advice and opinion of the attorney general. Such opinion and the rules, orders, and instructions of the commissioner prescribed and issued in conformity therewith shall be binding upon all officers, who shall observe such rules and obey such orders and instructions, unless the same are reversed, annulled, or modified by a court of competent jurisdiction”); R.C. 5715.29 (“[t]he tax commissioner shall prescribe such

general and uniform rules and issue such orders and instructions, not inconsistent with law, as he deems necessary, as to the exercise of the powers and the discharge of the duties of all officers which relate to the assessment of property and the levy and collection of taxes. The commissioner shall cause the rules prescribed by him to be observed, the orders and instructions issued by him to be obeyed, and the forms prescribed by him to be observed and used”); R.C. 5715.40 (“[c]ounty auditors ... shall perform the duties relating to the assessment of property for taxation or the levy or collection of taxes which the department of taxation directs”); 16 Ohio Admin. Code 5703-1-04 (“[a]ll existing rules, regulations, bulletins, directives and orders of the Tax Commissioner, with respect to all taxes and assessments administered and supervised by such Tax Commissioner, shall remain in full force and effect until modified, amended or rescinded in accordance with the law and this order”); *Olmsted Falls Bd. of Educ. v. Limbach*, 69 Ohio St. 3d 686, 688, 635 N.E.2d 367 (1994) (the tax “commissioner argues that, under R.C. 5715.29, she is authorized to ‘issue such orders and instructions, not inconsistent with law, as [s]he deems necessary, as to the exercise of the powers and the discharge of the duties of all officers which relate to the assessment of property and the levy and collection of taxes.’ To this end, she has circulated Bulletin 19.... We agree with the commissioner that this and other statutes permit the manner of filing in this case”); *Mid-Ohio Chem. Co. v. Limbach*, No. CA86-04-002, 1987 WL 6707, at *4 (Fayette County Feb. 17, 1987) (the court bases its conclusion on a tax bulletin and “reverse[s] [the Board of Tax Appeals] because we find its ruling to be clearly unreasonable and in conflict with [Tax] Bulletin 147”).

Ohio’s tax law provisions, and Tax Bulletin 23 in particular, support the conclusion that a county auditor is required to verify the income information provided by an applicant for the homestead exemption. Ohio Department of Taxation Tax Bulletin 23, “The Homestead Exemption for the Aged, Disabled, Veterans with 100 Percent Service-Connected Disabilities, and Surviving Spouses,” (last revised September 2014), *available at* http://www.tax.ohio.gov/government/county_auditor_bulletins.aspx. Tax Bulletin 23 describes the process for “determination of income” for purposes of the homestead exemption. *Id.* at 20-23. In particular, the bulletin says, “[i]t is the auditor’s responsibility to determine whether an individual applicant’s income is no more than the applicable threshold.” *Id.* at 21. The bulletin also describes various tools the Department of Taxation provides to assist county auditors in effecting their income verification responsibilities. These include access to a web-based income verification system, a flow diagram for the various forms and returns which may be available from an applicant, and a “Form 105H” for determining the income of those who are not required to file income tax returns under R.C. 5747.08. *Id.* at 21-22; *see* “Additional Questions” section, *infra*.

Pursuant to the clear language of R.C. 5715.28, R.C. 5715.29, R.C. 5715.40, rule 5703-1-04, and Ohio’s courts, the directives set out in Tax Bulletin 23 have the effect of law, and the bulletin should be followed by county auditors as they fulfill their duties in administering the homestead exemption. Thus, we conclude that a county auditor is required to verify the income information provided by an applicant for the homestead exemption.

Additional Questions: Whose Income, How, and How Often to Verify

We next address your question whether a county auditor is required to verify income information provided by an applicant for the homestead exemption when the applicant has not filed an Ohio income tax return. The statutory provisions described above apply equally to all homestead exemption applicants regardless of whether they are required to file an Ohio income tax return under R.C. 5747.08. Moreover, Tax Bulletin 23 acknowledges that many homestead applicants will have only Social Security income and thus not be required to file an Ohio income tax return;¹ the bulletin describes two documents the Department of Taxation has created to assist the county auditor when an applicant is not required to file an Ohio income tax return under R.C. 5747.08.² Thus, a county auditor is required to verify the income information provided by an applicant for the homestead exemption even when the applicant is not required to file an Ohio income tax return under R.C. 5747.08.

This takes us to your question of how a county auditor should verify the income of an applicant for the homestead exemption. Specifically, you wish to know whether a county auditor is required to use the web-based income verification system provided by the Tax Commissioner.

¹ Social Security income is not taxable in Ohio to the extent it is included in the calculation of federal adjusted gross income. R.C. 5747.01(A)(5); Ohio Department of Taxation Tax Bulletin 23, “The Homestead Exemption for the Aged, Disabled, Veterans with 100 Percent Service-Connected Disabilities, and Surviving Spouses,” (last revised September 2014), *available at* http://www.tax.ohio.gov/government/county_auditor_bulletins.aspx, at 21.

² Tax Bulletin 23 provides at 21:

If the applicant is not required to file an Ohio income tax return, the Department of Taxation has created two documents to assist the county auditor. The first is a flow diagram, to walk the auditor through the various returns/forms which may be available from the applicant. This diagram provides pathways to follow if an applicant has filed a state tax return; a federal tax return; or has not filed any tax return. If the applicant has not filed any tax return, Form 105H has been prescribed to assist the auditor. This form seeks information concerning the most common types of income typically earned by retired or disabled persons, as well as the most common types of deductions that could apply to such persons. The auditor should use this form with those applicants who have informed the auditor that they are not required to file income tax returns. The auditor can confirm the information provided by reviewing the types of federal forms listed above.

The “federal forms listed above” are a W-2, Form 1099, Form SSA-1099, and Form 1099R. Tax Bulletin 23 at 20-21.

No provision in R.C. 323.151-.159 or R.C. Chapter 5715 directs or specifies the way in which a county auditor shall verify income. Rather, R.C. 323.153(A)(3) requires an applicant for the homestead exemption who is subject to the “total income” provision (R.C. 323.152(A)(1)(b)(iii)) to sign a statement delegating authority to the Tax Commissioner or county auditor “to examine any tax or financial records relating to the income of the applicant as stated on the application for the purpose of determining eligibility for the exemption[.]” This delegation of authority is not restricted to the Tax Commissioner’s web-based income verification system, and it does not restrict a county auditor’s examination to particular tax or financial records of an applicant. Furthermore, Tax Bulletin 23 describes methods of income verification that do not require use of the Tax Commissioner’s web-based income verification system.³ Accordingly, a county auditor is not required to use the web-based income verification system provided by the Tax Commissioner and may complete the income verification using any reasonable means, including examination of any tax or financial records relating to the income of the applicant as stated on the application.

You also ask whether a county auditor is required to conduct the income verification each year for each homestead exemption applicant. The county auditor is required to mail a continuing application each year to each person receiving the homestead exemption. R.C. 323.153(C)(4). The continuing application is used to report changes in information, including total income, that was previously reported to the auditor and that is relative to the reduction in taxes on the property. *Id.* No provision in R.C. 323.151-.159 or R.C. Chapter 5715 requires a county auditor to separately verify the income of homestead exemption recipients on a recurring annual basis.⁴ Rather, R.C. 323.153(C)(1) states that,

³ Tax Bulletin 23 provides at 22:

In a rare number of cases, an applicant will have filed a tax return for the prior year, but no information will be available for that return through the [web-based income verification system] application.... In such rare cases, it will be the auditor’s responsibility to verify income. Please consider the diagram as well the income-estimator form (DTE 105H) provided. Additionally, tax transcripts are available to the filer at any time through the Department of Taxation’s online services, located at the website: <https://www.tax.state.oh.us/IFILE/IFileRegWeb/login.jsp>. These transcripts may be used by the auditor to confirm income. However, only the individual taxpayer may obtain the transcript, as it is necessary to create a user profile and password to use the system. The filer may also obtain a Tax transcript via telephone at 1-800-282-1780.

⁴ Tax Bulletin 23 provides at 20:

[i]f, in any year after an application has been filed under [R.C. 323.153(A)(1) or (2)], the owner does not qualify for a reduction in taxes on the homestead or on the manufactured or mobile home set forth on such application, the owner shall notify the county auditor that the owner is not qualified for a reduction in taxes.

See also R.C. 323.153(E) (“[n]o person shall knowingly fail to notify the county auditor of changes required by [R.C. 323.153(C)] that have the effect of maintaining or securing a reduction in taxes under [R.C. 323.152]”). A county auditor is not required to verify income each year for continuing applications for a homestead exemption. Nonetheless, a county auditor’s responsibilities in administering the homestead exemption do not end after the initial income verification. R.C. 323.153 contemplates that a county auditor has the discretion to review an individual homestead exemption applicant’s income on a continuing basis or if given cause. *See, e.g.*, R.C. 323.153(C)(3) (“[i]f the county auditor or county treasurer *discovers* that the owner of property not entitled to the reduction in taxes ... failed to notify the county auditor as required” (emphasis added)).

This brings us to your next question, whether a county auditor is required to verify the income provided on a homestead exemption application only if independent information comes to a county auditor’s attention that calls into question the veracity of the income information provided on the application. We have answered this question in our response to your first question—that is, a county auditor is required to verify the income information provided by all applicants, regardless of whether the auditor receives independent information calling into question the veracity of the income entered on their applications. But this question reiterates that the responsibility of a county auditor to administer the homestead exemption laws after the initial

It is also important to note that there is no limit on the number of times an applicant can apply for homestead. If an applicant is denied homestead on the basis of exceeding the income threshold, the applicant can apply for any year following the year in which his income no longer exceeds the threshold. For instance, if a person turning 65 continues to work, his income may exceed the threshold. But if, when the person turns 70, he ceases employment, his income may then be below the income threshold. That person may apply for the homestead exemption in the year following the year in which income does not exceed the threshold. The applicant must continue to meet the other requirements of statute.

As a person who exceeds the income threshold for the homestead exemption may reapply year after year until he qualifies, a county auditor will be required to verify the applicant’s income until the applicant’s application for the homestead exemption is approved. After that time, the applicant will receive a continuing application pursuant to R.C. 323.153(C)(4).

income verification is complete is continuing. Stated differently, it would be prudent for a county auditor to verify income information of continuing applications for the homestead exemption, particularly in cases where the county auditor receives independent information that calls into question the veracity of an applicant's information. Finally, we need not address your last question as it is resolved by the foregoing discussion and the following conclusions.

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. A county auditor is required to verify the income information provided by an applicant for a reduction of real property taxes under R.C. 323.152. A county auditor is required to verify the income information of an applicant even when the applicant is not required to file an Ohio income tax return under R.C. 5747.08.
2. A county auditor is not required to use the web-based income verification system provided by the Tax Commissioner to verify the income information provided by an applicant for a reduction of real property taxes under R.C. 323.152. A county auditor may complete the income verification using any reasonable means, including examination of any tax or financial records relating to the income of the applicant as stated on the application.
3. Pursuant to R.C. 323.153(C)(4), a county auditor is required to mail a continuing application each year to each person receiving a reduction of real property taxes under R.C. 323.152. While the continuing application is used to report changes in information, including total income, that was previously reported to the auditor and that is relative to the reduction in taxes on the property, a county auditor is not required to separately verify on a recurring annual basis the income of a person receiving a reduction of real property taxes under R.C. 323.152.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General