



 Peter A. Cooper

Bill Analysis
 Legislative Service Commission

H.B. 391

125th General Assembly
 (As Introduced)

Rep. Gilb

BILL SUMMARY

- Transfers some property tax exemption administrative functions from the Tax Commissioner to county auditors.
- Affects tax exemption applications, and related tax forgiveness requests, for United States government property; public roads and highways; property exempted under enterprise zone, tax increment financing, urban renewal, and community urban redevelopment programs; and new improvements or additions to public buildings (including public school buildings) that are already tax-exempt.
- Transfers responsibility from the Tax Commissioner to county auditors for decisions over the validity of ongoing tax exemption for property exempted under enterprise zone, tax increment financing, urban renewal, and community urban redevelopment programs.

CONTENT AND OPERATION

Real property tax exemption administration

Current law

(R.C. 5715.27)

Current law requires almost all real property tax exemption requests to be filed with the Tax Commissioner. The Tax Commissioner is responsible for approving or disapproving exemption requests, for notifying school boards of the requests, and for conducting any hearings on the requests. School boards affected by an exemption request may participate in the hearing, and may appeal the Tax Commissioner's decision to the Board of Tax Appeals. The current tax exemption

application procedure applies to exemption claims based on almost all available grounds for tax exemption, including those based on government or other public use; religious, charitable, or educational use; use by a veterans organization; cemeteries; veterans memorials; some historic buildings and lands; and private property qualifying for exemption under the various local economic and community development programs (enterprise zone, tax increment financing, urban renewal, and community urban redevelopment).¹

If an exemption application is filed for property that has unpaid or delinquent taxes already charged against it, the applicant also may request that the Tax Commissioner "remit" (i.e., forgive) up to three years' worth of unpaid or delinquent taxes, as well as any associated penalties and interest. (Occasionally, property that is eligible for exemption is taxed because the property owner never filed an exemption application. The forgiveness or remission of taxes accruing during the period of eligibility serves the purpose of retrospectively granting the exemption, but for not more than three years.)

Responsibility for some tax exemption duties placed on county auditors

(R.C. 725.02, 1728.10, 5709.40, 5709.41, 5709.62, 5709.63, 5709.632, 5709.73, 5709.78, 5715.27, and 5715.271)

The bill shifts responsibility for some property tax exemption procedures and decisions from the Tax Commissioner to county auditors. Responsibility is shifted for the following four classes of property tax exemptions:

- Public roads and highways;
- Property owned by the United States;
- Improvements and additions made to school buildings and other public buildings that have been previously exempted;
- Property exempted under the economic and community development programs--i.e., enterprise zone (R.C. 5709.62, 5709.63, and 5709.632), tax increment financing (R.C. 5709.40, 5709.41, 5709.73, and 5709.78), urban renewal (R.C. 725.02), and community urban redevelopment (R.C. 1728.10).

¹ Requests for exemption under the Community Reinvestment Area (CRA) law are administered by the local "housing officer," and the "brownfield" exemption for contaminated property is administered by the Director of the Ohio EPA, the Director of Development, and the Tax Commissioner.

The Tax Commissioner continues to be responsible for administering requests for tax exemption and remission of unpaid taxes relating to classes of property other than the four classes indicated above. In the case of public buildings and public school buildings, the Tax Commissioner continues to administer the initial exemption requests for the buildings; county auditors administer only exemption requests involving subsequent additions or improvements to the buildings.

In most respects, the procedure for filing and approving tax exemption and remission requests for those four classes of property remains the same as under current law, except that the county auditor, rather than the Tax Commissioner, is responsible for administering the procedures. An application for exemption or remission is filed with the county auditor of the county where the property is located, rather than with the Tax Commissioner, and the county auditor is responsible for approving or disapproving the application. As under current law, applications must be filed before December 31 of the tax year the exemption applies to. The county auditor, like the Tax Commissioner, cannot consider an application unless it is accompanied by the county treasurer's certificate showing that (1) all tax payments are current (except for those the applicant seeks to have remitted), (2) the applicant has a valid delinquent tax payment contract with the treasurer, or (3) a "tax certificate" has been issued for the property and has not yet been redeemed.²

As under current law, tax exemption and tax remission decisions may be made separately for each year if the request is pending for more than one year and if the use of the property, or some other fact affecting eligibility, changes while the request is pending. A county auditor may not remit taxes for more than three years, or remit taxes accruing before the applicant acquired the property (if less than three years). If any adjustment in the tax list is necessitated by the auditor's exemption and remission decision, the auditor must make the adjustment, and if the property is tax-delinquent and a tax certificate for the property has been sold, the county auditor must notify the county treasurer of the auditor's decision on the exemption application. Tax exemption applications and related documents continue to be public records under the public records law. And, county auditors, like the Tax Commissioner, may remit a penalty on property entitled to exemption if the auditor determines that the applicant applied for the exemption and remission in good faith.

² *A tax certificate is a device for expediting the collection of delinquent taxes: it is sold to a private party, who is entitled to some or all of the delinquent taxes if they are ever paid (plus interest) or to some or all of the proceeds from a forced tax sale of the property. The county treasurer administers tax certificate sales. If delinquent taxes are remitted, the certificate holder is entitled to a refund.*

In some respects, the procedures governing exemptions to be decided by county auditors differ from the existing procedures governing exemptions decided by the Tax Commissioner. School boards continue to be able to request notification of most exemption applications, but the county auditor must issue the notices within ten days after an exemption application is received by the auditor, instead of issuing quarterly notices, as the Tax Commissioner is required to do. Notices are required only for exemption applications involving property having a true value in money (*i.e.*, appraised fair market value) of at least \$50,000; there is no valuation limit under current law. And county auditors may send notices either by mail or electronically.

School board participation

School boards have the same rights to participate in county auditors' hearings on exemption and remission applications as they currently have with respect to the Tax Commissioner's hearings, including the right to appeal decisions to the Board of Tax Appeals if the school board participates in the original hearing. As under current law, a school board may participate in a tax exemption and remission hearing only if the school board files a "statement" indicating its intent to participate. But, under the bill, the statements must be filed within 30 days after the school board receives notice of the application; under the existing procedure, statements must be filed within at least 45 days after the board receives the quarterly notice from the Tax Commissioner. However, county auditors, like the Tax Commissioner, may extend the statement filing deadline. As under current law, a decision on most classes of exemption applications may not be made until the school board's opportunity to file such a statement has passed, unless the school board waives, in writing, its right to participate. But regarding economic and community development tax exemption applications, the county auditor may consider the application before the school board's opportunity passes if the property owner requests an earlier consideration, as is allowed under current law.

Challenging existing tax exemptions

(R.C. 5715.27(E), (G), and (H) and 5715.271(E), (G), and (H))

Under current law, certain interested parties may challenge existing property tax exemptions that have already been granted.³ All challenges are initiated by filing a complaint with the Tax Commissioner.

³ *The interested parties permitted to file complaints challenging continuing exemptions are property owners in the taxing district where the exempted property is located (or their attorneys), the county treasurer, the county prosecutor, the board of county*

Under the bill, complaints challenging some kinds of existing exemptions must be filed with the county auditor rather than the Tax Commissioner. The affected complaints are those relating to exemptions granted under one of the economic or community development programs (*i.e.*, enterprise zone, tax increment financing, urban renewal, or community urban redevelopment). Complaints relating to all other kinds of exemptions, including those that will be granted by the county auditor under the bill (public roads, United States government property, and new additions to previously exempted public buildings), must continue to be filed with the Tax Commissioner. Complaints still have to be filed before December 31 of the tax year in question. County auditors, like the Tax Commissioner under current law, may decide on the complaint separately for individual years if the complaint is pending for more than one year and if any facts affecting eligibility for exemption change while the complaint is pending. Complaints and any related documents continue to be public records under the public records law.

Appeals from county auditor's decision

(R.C. 5717.02)

Appeals from a county auditor's decision on a tax exemption request is dealt with in the same way as an appeal from the Tax Commissioner's decision under current law. The property owner or a school board retains the right to appeal the decision to the Board of Tax Appeals (BTA), and the procedures governing those appeals remains the same, except that the appeal is taken against the county auditor's decision rather than the Tax Commissioner's. Accordingly, the appellant (*i.e.*, property owner or school board) challenging a county auditor's decision must file a notice of the appeal with the auditor, and the appeal to the BTA must be accompanied by a copy of the county auditor's notice to the appellant of the auditor's decision. When notified of an appeal, the county auditor must certify to the BTA a transcript of the record of the auditor's hearing on the tax exemption request, as well as all evidence considered by the auditor.

Transitional provisions

(Sections 3 and 4)

The bill prescribes transitional rules for property tax exemption and remission applications filed on or after the bill's introduction date (February 3,

commissioners, and any school board, board of township trustees, or municipal corporation in the county or taxing district where the exempted property is located.
(R.C. 5715.19.)

2004) but before the bill's effective date. Applications regarding the kinds of property that the county auditors administer under the bill, but filed with the Tax Commissioner during that interim period, must be transferred by the Tax Commissioner to the appropriate county auditors. Applications filed before the bill's introduction may be completed by the Tax Commissioner, or the Tax Commissioner may transfer them to the appropriate county auditors. For any application the Tax Commissioner transfers to a county auditor, the date the application was filed with the Tax Commissioner is considered to be the date it was filed with the county auditor.

School boards that requested notification from the Tax Commissioner of tax exemption applications before the bill's effective date do not have to file new requests with the county auditor. Those school boards are treated as having requested notification from the county auditor on the bill's effective date with respect to the four classes of exemption requests that auditors administer under the bill. The Tax Commissioner must send each county auditor a list of the school boards in the county that had requested notification from the Tax Commissioner under existing law.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-03-04	p. 1592

H0391-I-corrected-125.doc/jc