
STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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TO: Assessing Officials & County Auditors
FROM: Wesley R. Bennett, Commissioner
RE: Legislation Affecting Deductions, Credits, and Exemptions
DATE: June 26, 2023

The Department of Local Government Finance (“Department”) issues this memorandum to inform local officials about legislative changes concerning property tax deductions, exemptions, and credits. The relevant legislation is Senate Enrolled Act 46-2023 (“SEA 46”); Senate Enrolled Act 325-2023 (“SEA 325”); House Enrolled Act 1454-2023 (“HEA 1454”); and House Enrolled Act 1499-2023 (“HEA 1499”). Governor Eric J. Holcomb signed SEA 46 on May 1, 2023, and signed SEA 325, HEA 1454, and HEA 1499 on May 4, 2023.

This memorandum is for informative purposes only and is not a substitute for reading the law.

I. The Homestead Deduction

Section 2 of SEA 325 revises the definition of property that must be considered part of the homestead property under Ind. Code § 6-1.1-12-37. This clarifying change was in response to the Indiana Tax Court’s decision in *Schiffler v. Marion County Assessor*, 21-TA-00014 (Ind. Tax Ct. 2021). These changes are effective January 1, 2024, and first apply to the January 1, 2024 assessment date.

Prior to *Schiffler*, assessors generally applied the homestead to one house, one attached garage, and up to one acre of immediately surrounding property. The Indiana Tax Court held in that case that the language in Ind. Code § 6-1.1-12-37 was not clear enough to limit the homestead and 1% tax cap to *only* one house and one garage.

Section 2 of SEA 325, therefore, amends Ind. Code § 6-1.1-12-37 in three ways.

A. Definition of “Dwelling”

First, it modifies the definition of “dwelling” to say, in reference to residential real property improvements that is used as an individual’s residence, the property is “limited to a single house and a single garage, regardless of whether the single garage is attached to the single house or detached from the single house.” Therefore, “dwelling” for purposes of the homestead deduction may consist of a single house and an attached or detached garage, but not more. Note that a “dwelling” is not synonymous with the homestead property, itself.

B. Definition of “Homestead”

Second, the definition of “homestead” is modified to consist of a dwelling (as described above) and “up to one (1) acre of land immediately surrounding that dwelling, and any of the following improvements:

- (1) Any number of decks, patios, gazebos, or pools.
- (2) One (1) additional building that is not part of the dwelling if the building is predominantly used for a residential purpose and is not used as an investment property or as a rental property.
- (3) One (1) additional residential yard structure other than a deck, patio, gazebo, or pool.”

With this modification of the definition of “homestead”, the qualifying improvements do not have to be within the one (1) acre of land immediately surrounding the dwelling. Prior to the revisions under SEA 325, Ind. Code § 6-1.1-12-37(m) specified that qualifying residential yard structures must be attached to the dwelling. Subsection (m) of the current statute has been repealed.

C. Eligibility of Business Entities

Finally, Ind. Code § 6-1.1-12-37(k) and (l) are amended to remove provisions that allowed a corporation, limited liability company, partnership, and similar entities to receive homestead deductions if they were receiving the deduction for taxes due and payable in 2010. This was an exception to the provision in Ind. Code § 6-1.1-12-37(a) that prohibits these business entities from receiving the homestead deduction even if they are the owners of the homestead property. Note that this is not necessarily a legislative change in response to *Schiffler*.

Therefore, SEA 325 provides that these entities are no longer eligible to receive the homestead deduction starting with taxes due and payable in 2025. However, cooperative housing corporations (defined in 26 U.S.C. 216) and qualified personal residence trusts (created by U.S. Treasury Regulation 25.2702-5(c)(2)) are still eligible to receive the homestead deduction.

Example Scenarios:

- (1) A taxpayer owns one house and a surrounding acre of land, both of which are eligible for the homestead deduction. It has an attached garage, located on the one-acre of land, and it is used to store work tools and a personal vehicle. Does the homestead deduction apply to the garage?

Answer: Yes. In this case, the garage is primarily used for residential purposes.

- (2) Using the same set of facts as (1) above, except that the garage is used to run an auto-body shop, as permitted by the city, can the homestead deduction be applied to the garage?

Answer: No. The garage is used primarily to run a business.

- (3) Using the same set of facts, except that the garage was converted to a finished carriage house rented by a tenant year-round, is it still eligible for the homestead?

Answer: No. While the carriage house is residential property and could be the one additional building allowed to be within the one acre of the homestead property, it is being used as a rental property and arguably as an investment, which is prohibited.

- (4) Using the same set of facts as (3) above, except that the carriage house is rented as an Airbnb only for the Indy 500 weekend, while the rest of the year, the taxpayer's family uses it for recreational space and study. Is it eligible for the homestead?

Answer: Yes, assuming no other facts and the carriage house's predominant use is residential. The carriage house is primarily used as part of the homestead property. It is rented out only a few days per year.

- (5) An individual has a home that is their primary residence on a three-acre parcel, and the parcel contains a detached garage and a large shed for gardening supplies. While the detached garage is located within the one acre of land immediately surrounding the dwelling, the large shed is not. Which structures are eligible for the homestead deduction?

Answer: All three structures would be eligible for the homestead deduction. As amended under Section 2 of SEA 325, the qualifying residential yard structures are not required to be within the one acre of land immediately surrounding the dwelling.

- (6) An individual has a home that is their primary residence on a three-acre parcel, and the parcel contains an attached garage, a detached garage, a large shed for gardening supplies, and a medium shed used to store a riding lawnmower. This property would have more than one additional building that is not part of the dwelling and both are predominantly used for a residential purpose. Which shed would be included in the homestead?

Answer: As contemplated under Ind. Code § 6-1.1-31.5-2.5 (current law), the deduction shall be applied in a manner that will maximize the benefit of the deduction to the taxpayer. This means that the shed property with the greatest assessed value should be the structure included within the homestead.

II. Nonresidential Real Property & Residential Real Property

Sections 3 and 4 of SEA 325, both effective January 1, 2024, redefine certain classifications of property for property tax cap purposes.

Section 3 of SEA 325 amends Ind. Code § 6-1.1-20.6-2.5 to redefine “nonresidential real

property” subject to the three percent (3%) property tax cap to mean real property that is not:

- (1) a homestead (as defined in Ind. Code § 6-1.1-20.6-2);
- (2) residential property (as defined in Ind. Code § 6-1.1-20.6-4);
- (3) long term care property (as defined in Ind. Code § 6-1.1-20.6-2.3); or
- (4) agricultural land (as defined in Ind. Code § 6-1.1-20.6-0.5).

The following have been removed from this definition:

- (1) A building or other land improvement, including the footprint on which the building or improvement is situated.
- (2) Undeveloped land in the parcel that is not part of the homestead or residential property.

SEA 325 changes the definition of “nonresidential property” so that, while long term care properties and agricultural land were previously classified as “nonresidential,” both are now specifically excluded from the definition of “nonresidential property” in Ind. Code § 6-1.1-20.6-2.5. However, long term care properties¹ and agricultural land² are still subject to the two percent (2%) property tax cap under Ind. Code § 6-1.1-20.6-7.5(a)(3) and Ind. Code § 6-1.1-20.6-7.5(a)(4), respectively.

Additionally, Section 4 of SEA 325 amends the definition of “residential property” in Ind. Code § 6-1.1-20.6-4 to now include land, buildings, and residential yard structures including decks, patios, gazebos, and pools that are not part of a homestead, but that are predominately used for residential purposes (such as residential rental property). In addition, there is no longer a limitation that the land on which the single-family dwelling is located not exceed one (1) acre. In other words, what was previously classified as excess residential property (subject to the three percent (3%) property tax cap) will now be considered “residential property” subject to the two percent (2%) property tax cap. Additionally, the changes made by SEA 325 will also place some properties that may previously have been categorized as non-homestead (in a 2% or 3% category) in the homestead classification.

III. Limitation on Appeals of Determination on Homestead Deduction

On May 4, 2023, Governor Eric J. Holcomb signed into law House Enrolled Act 1454-2023 (“HEA 1454”). Section 25 of HEA 1454 amends Ind. Code § 6-1.1-15-1.1, effective July 1, 2023, to bar appeals of errors founded on claims that property was or was not eligible for the homestead deduction, to no later than one (1) year after the date on which the property that is subject to the appeal is assessed. In other words, taxpayers appealing a determination of what property is or is not included within the homestead as of the January 1, 2023 assessment date

¹ “Long term care property” is also still defined under Ind. Code § 6-1.1-20.6-2.3.

² “Agricultural land” is also still defined under Ind. Code § 6-1.1-20.6-0.5.

have until December 31, 2023 to file an appeal on this determination. Taxpayers appealing any other matters related to the assessment of property or the removal of a property tax incentive are still subject to the appeal deadlines outlined in Ind. Code § 6-1.1-15-1.1.

IV. Over 65 Deduction & Circuit Breaker Credit

Sections 1, 12, and 18 of HEA 1499 make amendments to the eligibility requirements for the Over 65 Deduction and Over 65 Circuit Breaker credit. These changes are effective retroactive to January 1, 2023. Pursuant to Section 18 of HEA 1499, the eligibility requirement changes are effective starting with the January 1, 2023, assessment date for taxes first due and payable in 2024.

A. Over 65 Deduction

Section 1 of HEA 1499 amended Ind. Code § 6-1.1-12-9 to provide for the applicable income thresholds to be adjusted upward to include the cost of living adjustment (“COLA”) for social security benefits for the immediately preceding calendar year. This adjustment occurs annually and begins with the January 1, 2023, assessment date for taxes due and payable in 2024.

These thresholds are applied to the income from the immediately preceding year. Keep in mind, however, that eligibility for the deduction is still based on the income received in the year that is two (2) years before when the taxes are due. For benefits to be received in 2022, the year immediately preceding the January 1, 2023, assessment date, for example, the Social Security Administration (“SSA”) reported the COLA to be 5.9%. See the SSA’s information at the following link: “[Social Security Administration 2022 COLA Fact Sheet](#).” This adjustment is applied to the income received in 2022, the immediately preceding year from when the deduction is claimed for pay-2024. General information on the COLA can be found on the SSA website at this link: <https://www.ssa.gov/cola/>.

Therefore, for pay-2024, the income threshold for an individual filing a single return will increase from \$30,000 to \$31,770 ($\$30,000 * 0.059 = \$1,770$; $\$30,000 + \$1,770 = \$31,770$). Likewise, the income threshold for married couples and joint owners will increase from \$40,000 to \$42,360 ($\$40,000 * 0.059 = \$2,360$; $\$40,000 + \$2,360 = \$42,360$). With each subsequent assessment date, these amounts are then adjusted separately by the COLA for the immediately preceding year (the 2023 COLA for pay-2025, for example).

B. Over 65 Circuit Breaker

Section 12 of HEA 1499 amended Ind. Code § 6-1.1-20.6-8.5 with two changes. First, the COLA income adjustments referenced above with respect to the Over 65 Deduction will also apply to the Over 65 Circuit Breaker. Therefore, based on a 5.9% COLA for 2022, applied to income received in 2023 for taxes due and payable in 2024, the income threshold for an individual filing a single return will increase from \$30,000 to \$31,770 ($\$30,000 * 0.059 = \$1,770$; $\$30,000 + \$1,770 = \$31,770$). Likewise, the income threshold for married couples and joint owners will increase from \$40,000 to \$42,360 ($\$40,000 * 0.059 = \$2,360$; $\$40,000 + \$2,360 = \$42,360$).

Second, Section 12 of HEA 1499 raises the assessed value limitation from \$200,000 to \$240,000, starting with the January 1, 2023, assessment date. This limitation is still subject to the exception when assessed value increases are not attributed solely to substantial renovation or new improvements (after December 31, 2019).

V. Supplemental Homestead Deduction Percentage Adjustments

Section 2 of House Enrolled Act 1499 amends Ind. Code § 6-1.1-12-37.5 to adjust the percentages for the homestead supplemental deduction for pay-2024 and pay-2025.

As applied to properties with assessed values of not more than \$600,000 (after application of the homestead deduction), for taxes first due and payable before January 1, 2024, the amount of the supplemental deduction is 35%. For January 1, 2024, it is 40%, and for January 1, 2025, it is 37.5%. After December 31, 2025, the supplemental deduction amount returns to 35%.

As applied to properties with assessed value over \$600,000 (after application of the homestead standard deduction), for property taxes first due and payable before January 1, 2024, it is 25% of the assessed value. For property taxes in 2024, it is 30%, and in 2025, 27.5%. After December 31, 2025, the percentage returns to 25%.

VI. County Option Property Tax Relief for Homesteads

Section 13 of HEA 1499 adds Ind. Code § 6-1.1-50, effective upon passage. This new chapter in the Indiana Code allows the county fiscal body to adopt an ordinance to provide property tax relief to qualified individuals for property taxes first due and payable in 2023.

A “qualified individual” is defined as an individual who qualified for a homestead deduction for property taxes first due and payable in 2023 on the individual’s homestead property.

Before adopting the ordinance, the county fiscal body must conduct a public hearing on the proposal and public notice of the hearing in accordance with Ind. Code § 5-3-1.

The county fiscal body’s ordinance must provide the amount of property tax credits applied to the qualified individual’s homestead property. This amount may be either

- (1) determined by the county fiscal body and equal for all qualified individuals; or
- (2) proportional to each qualified individual’s share of the total amount of property tax liability on homesteads first due and payable in 2023.

The ordinance may allow a qualified individual to choose the manner of receiving property tax relief under any of the following forms:

- (1) A rebate check.

- (2) A credit against the qualified individual's homestead property tax liability installment due in November 2023.
- (3) A credit against the qualified individual's homestead property tax liability first due and payable in 2024.

If the qualified individual chooses the rebate check, the county auditor shall issue a rebate check to the qualified individual no later than December 31, 2023. If a credit against either the November 2023 installment or the 2024 property tax liability is chosen, the county auditor will apply the credit against the applicable installment or liability.

After the adoption of the ordinance, the county fiscal body must give notice of the adoption, along with a certified copy of the ordinance, to the following:

- (1) The Department, on the form and in the manner prescribed by the Department.
- (2) The county auditor.
- (3) The fiscal officer of each taxing unit in the county.

The Department, upon request, must provide technical assistance to a county fiscal body, county auditor, or affected taxing unit in adopting and implementing an ordinance. The Department may also adopt emergency rules under Ind. Code § 4-22-2-37.1 to implement this chapter, to expire no later than January 1, 2025.

VII. County Option Circuit Breaker Tax Credit

SEA 46 adds Ind. Code § 6-1.1-49 as a new chapter to the Indiana Code, effective July 1, 2023. This new chapter allows a county fiscal body to provide for a circuit breaker tax credit to qualified individuals in a designated "neighborhood enhancement district" ("district").

A "qualified individual" is an individual who:

- (1) has received a homestead deduction for the qualified individual's homestead property in the immediately preceding calendar year;
- (2) is receiving a homestead deduction for the same homestead property in the current calendar year;
- (3) has lived in the homestead property for at least ten (10) years on or before December 31 of the calendar year immediately preceding the current calendar year;
- (4) if fifty-five (55) years of age or older on or before December 31 of the calendar year preceding the year in which the credit is claimed; and

- (5) had an adjusted gross income below the amounts, if specified in the ordinance adopted by the county fiscal body, for the calendar year that is two (2) years before the calendar year in which the credit is applied.

The ordinance adopted by the county fiscal body must do the following:

- (1) Include a boundary description of the district or districts to which the ordinance applies. The district may include all of the territory of the county or one (1) or more specific geographic territories within the county. However, the boundary description must be sufficient to identify the parcel or parcel to which the credit may be applied, including by taxing district, a parcel list, or a legal description.
- (2) Specify any income thresholds for a qualified individual. The same income thresholds must be applied to each district designated in the county.
- (3) Specify the percent increase on a qualified individual's property tax liability in a particular year compared to the prior year that is used to determine the amount of the credit. The percent must be at least two percent (2%) but not exceed five percent (5%). The same percentage must be applied to each district designated in the county.
- (4) Specify that the credit cannot be applied to property taxes first due and payable after December 31, 2027.
- (5) Specify any other requirements pertaining to eligibility. The same additional requirements must be applied to each district designated in the county.

The ordinance is effective January 1 of the year following the year in which the ordinance is adopted. The county fiscal body may later rescind the ordinance.

To claim the credit, a qualified individual must file a certified statement with the county auditor. The certified statement must be prescribed by the Department. To this end, the Department will be prescribing a new form for individuals seeking to claim the optional county credit. Once filed, a qualified individual is not required to file a certified statement in the following year if the qualified individual remains eligible for the credit for that year.

In terms of restrictions:

- (1) Only one (1) credit can be claimed per homestead by any qualified individual.
- (2) A qualified individual who receives this credit is unable to claim the Over 65 Circuit Breaker Credit under Ind. Code § 6-1.1-20.6-8.5.
- (3) The credit will not be applied to any portion of the homestead that is used for trade or business purposes in connection with the production of income.

The amount of the credit is equal to the amount that prevents the qualified individual's property tax liability on the homestead from increasing by the percent stated in the ordinance authorizing the credit. As stated above, this percentage must be between 2% and 5%. Therefore, a qualified individual's homestead property tax liability (excluding income-producing property) may be at least 102% but not more than 105% from the previous year's property tax liability on that same property.

The county auditor shall apply the credit to each qualified individual who received the credit in the prior year unless either of the following happens:

- (1) The county auditor determines the qualified individual is no longer eligible to receive the credit.
- (2) The county fiscal body rescinds or repeals the ordinance authorizing the credit.

The county auditor shall remove the credit when the ownership of the homestead property changes, and the qualified individual no longer owns or principally resides in the homestead. The qualified individual is required to file a certified statement with the county auditor when the use of the property partly or entirely changes, or the qualified individual knows or should have known that he or she no longer qualifies for the credit. This statement must be filed within sixty (60) days of knowing about ineligibility or the change of use. Failing to file this statement results in paying the additional taxes that would have been due had the credit not been imposed on the property, plus a civil penalty of ten percent (10%). The additional taxes owed, and the civil penalty become part of the property tax liability.

VIII. Cemetery Property

Section 21 of HEA 1454 amends Ind. Code § 6-1.1-10-27 to provide that the property tax exemption for cemetery property extends to tangible property owned by a not-for-profit corporation, a church, or a religious society. Currently, only a cemetery corporation, firm, or association organized under Indiana law is eligible. In addition, this section also provides that property eligible for the cemetery exemption includes crematories and funeral homes. Finally, tangible property is eligible for the exemption if:

- (1) it has been dedicated or platted for a cemetery, crematory, or funeral home use, or a variance has been granted for one (1) or more of those uses;
- (2) a plat of it or variance from the plat has been recorded in the county in which the property is located; and
- (3) it is exclusively used for cemetery, burial, crematory, or funeral purposes.

This section is effective retroactive to January 1, 2023. Noncode Section 218 of HEA 1454 provides that this exemption applies to assessment dates after December 31, 2022. Therefore, an

exemption was granted under Ind. Code § 6-1.1-10-27, as amended, first applies for taxes due and payable in 2024.

IX. Geothermal Deduction

Section 22 of HEA 1454 amends Ind. Code § 6-1.1-12-35.5 to specify that, where the owner of a property is receiving a deduction for a geothermal heating or cooling device installed on the property, the device previously certified by the Indiana Department of Environmental Management (“IDEM”) will remain certified when the property changes ownership. The new owner will remain eligible for the deduction and will not need to receive certification from IDEM for the geothermal heating or cooling device.

This section is effective July 1, 2023. This amendment does not impose a new filing requirement. Therefore, this section will apply to geothermal deductions applied to taxes due and payable in 2024.

X. Sales Disclosure Form as Filing for the Homestead Deduction

Sections 23 and 24 of HEA 1454 amend Ind. Code §§ 6-1.1-12-37 and 6-1.1-12-44, respectively. These amendments provide that a county auditor may not reject a sales disclosure form for purposes of the homestead deduction because the applicant does not have a valid driver's license or state identification card with the address of the homestead property.

These amendments are effective January 1, 2024, and first applies to taxes first due and payable in 2025.

Contact Information

For questions, please contact Barry Wood, Director of Assessment, at bwood@dlgf.in.gov or Jennifer Thuma, Deputy General Counsel, at jthuma@dlgf.in.gov.