OPINION NO. 2005-043

Syllabus:

1. When territory annexed to a municipality remains part of a township, the territory should be included on the abstract of real property and on the tax list and duplicate in the manner in which other property is included, with information reflecting that the property is located in both the township and the municipality, as well as in other

appropriate taxing units, in accordance with R.C. 319.28, R.C. 5715.16, R.C. 5715.23, and other relevant provisions. The determination of the tax reduction factor is made by the Tax Commissioner, in accordance with R.C. 319.301, 16 Ohio Admin. Code 5703-25-48, and other relevant provisions.

2. If township territory has been annexed into a municipal corporation and township boundaries have not been conformed to those of the municipality, millage within the 10-mill limitation must be allocated in accordance with the provisions of R.C. 5705.31, R.C. 5705.315, other relevant statutes, and any applicable annexation agreements that may exist.

3. Millage within the 10-mill limitation is allocated on an annual basis in accordance with R.C. 5705.31(D), and the county budget commission (or corresponding entity in a charter county such as Summit County) is empowered to determine each year how to allocate any inside millage that is not required by law to be allocated to a particular taxing unit.

4. If the boundaries of annexed township territory are not conformed to those of the municipality before the county auditor submits the abstract of real property to the Tax Commissioner but are so conformed before the end of the year, the property in that territory is subject to a tax levied by the township only if the territory is part of the township when the township certifies the tax to the county auditor pursuant to R.C. 5705.34 for inclusion on the tax list and duplicate pursuant to R.C. 319.28. (1995 Op. Att'y Gen. No. 95-010, approved and followed.)

5. If township territory has been annexed into a municipal corporation and township boundaries have not been conformed to those of the municipality, but taxes are calculated and levied as if the boundaries had been conformed, the actions of public officials taken to calculate and levy the taxes are presumed to be valid and of legal effect, and may be modified or corrected only in accordance with provisions of statute or through proper administrative or judicial procedures.

6. If the boundaries of annexed township territory are not conformed to those of the municipality at the time of an election, residents of the overlapping territory may vote on both township and municipal issues. Tax levies that are approved by township voters are levied throughout the township according to the township boundaries in existence when the township certifies the tax to the county auditor pursuant to R.C. 5705.34 for inclusion on the tax list and duplicate pursuant to R.C. 319.28, unless a specific statute provides to the contrary.

To: Sherri Bevan Walsh, Summit County Prosecuting Attorney, Akron, Ohio

By: Jim Petro, Attorney General, December 15, 2005

We have received your request for an opinion on several questions relating to the taxation of real property. You are concerned about a situation in which the boundaries of municipalities and townships are not identical, so that the territories of the municipalities and townships overlap, and it is determined that the overlapping territories have been taxed as part of the municipalities but not as part of the townships. You have asked the following questions:

1. How should these new taxing districts be treated on the Abstract of Real Property Values? Should it be abstracted as a new annexation to create the new district or would we first be required to reverse the original annexation action on the abstract to place the property back in the parent township before we could then annex it to the newly created taxing district? Would the result of either action have the same effect on the resultant reduction factor?

2. How should the division of inside millage be handled? Since almost all of our taxing districts are currently at the 10-mill limit, someone's inside millage would have to prevail. Should it belong to the original taxing authority or to the taxing authority to which it was originally annexed? Is there any language included in the original annexation petition that may address this?

3. We have had school districts petition the Summit County Budget Commission and be granted free inside millage. If the inside millage were granted back to the original taxing authority, what would be the status of that free millage that might no longer be available to them? Would we then be required to levy non-uniform tax rates as is only allowed in cases of annexation or would we be required to reverse the action of the Budget Commission to take back the inside millage from the school district?

4. If the boundaries are not conformed prior to the submission of the Abstract, requiring us to create a new taxing district, and the taxing authority subsequently conforms its boundaries prior to the end of the year, must the taxpayers in that new district be taxed by both entities for one year until the property can be again rerouted via the next Abstract? When does this become too late to change? Would it be at the submission of the Abstract in October or the submission of the tax rates in November or the calculation of reduction factors in December?

5. If the boundaries were not conformed, would that render our treatment of this property on prior Abstracts invalid? If so, what effect would this have on prior reduction factors and resultant tax rates since we have obviously altered the carry-over value used in those calculations?

6. If the boundaries are not conformed prior to the 2005 general elec-

tion, and residents vote on township and municipal issues, and the boundaries are conformed after the election, are the taxpayers obligated to pay property taxes for both the township and municipality since they were voted on?

Your letter of request states that the questions have arisen as a result of 2005 Op. Att'y Gen. No. 2005-024.[1] Accordingly, this opinion begins with a discussion of some basic legal principles addressed in 2005 Op. Att'y Gen. No. 2005-024

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[1] The syllabus to 2005 Op. Att'y Gen. No. 2005-024 includes the following conclusions:

1. A municipality may at any time initiate procedures pursuant to R.C. 503.07 to make the boundary lines of annexed township territory identical with the limits of the municipal corporation, unless the annexed territory is excluded from the operation of R.C. 503.07 pursuant to R.C. 709.023, R.C. 709.024, or R.C. 709.16, or is subject to restrictions upon the operation of R.C. 503.07 adopted in an annexation agreement under R.C. 709.192 or a cooperative economic development agreement under R.C. 701.07.
2. Following an annexation other than a merger, if the annexing municipality does not initiate proceedings pursuant to R.C. 503.07 to make the boundary lines of annexed township territory identical with the limits of the municipal corporation, and if the electors of the unincorporated area of the township do not take action pursuant to R.C. 503.09 to exclude the annexed territory from being located in any township, then the annexed territory remains part of the township, inhabitants residing in the annexed territory are residents of both the municipal corporation and the township, and, unless a statute provides a specific exclusion, those residents are obligated to pay both taxes levied by the municipal corporation and taxes levied by the township.
3. Following an annexation other than a merger, if the annexing municipality does not initiate proceedings pursuant to R.C. 503.07 to make the boundary lines of annexed township territory identical with the limits of the municipal corporation, and if the electors of the unincorporated area of the township do not take action pursuant to R.C. 503.09 to exclude the annexed territory from being located in any township, then the annexed territory remains part of the township, inhabitants residing in the annexed territory are residents of both the municipal corporation and the township, and, unless a statute provides a specific exclusion, those residents are entitled to vote on both municipal and township officers, issues, and tax levies.

and proceeds to analyze your concerns in light of these principles and other provisions of law.[2] On the basis of this analysis, we conclude:

1. When territory annexed to a municipality remains part of a township, the territory should be included on the abstract of real property and on the tax list and duplicate in the manner in which other property is included, with information reflecting that the property is located in both the township and the municipality, as well as in other appropriate taxing units, in accordance with R.C. 319.28, R.C. 5715.16, R.C. 5715.23, and other relevant provisions. The determination of the tax reduction factor is made by the Tax Commissioner, in accordance with R.C. 319.301, 16 Ohio Admin. Code 5703-25-48, and other relevant provisions.

2. If township territory has been annexed into a municipal corporation and township boundaries have not been conformed to those of the municipality, millage within the 10-mill limitation must be allocated in accordance with the provisions of R.C. 5705.31, R.C. 5705.315, other relevant statutes, and any applicable annexation agreements that may exist.

3. Millage within the 10-mill limitation is allocated on an annual basis in accordance with R.C. 5705.31(D), and the county budget commission (or corresponding entity in a charter county such as Summit County) is empowered to determine each year how to allocate any

[2] As discussed in 2005 Op. Att'y Gen. No. 2005-024, at 2-237 n.1, the fact that Summit County has adopted a charter through which it exercises home rule authority does not affect the analysis of matters involving annexation of territory to a municipal corporation, because those are matters of a general nature, are statewide in their scope, and are not proper powers of local self-government, so they cannot be modified by municipal or county charter. *See* Ohio Const. art. X, § 3; Ohio Const. art. XVIII, § 3; *see also, e.g., State ex rel. Mill Creek Metro. Park Dist. Bd. of Comm'rs v. Tablack*, 86 Ohio St. 3d 293, 714 N.E.2d 917 (1999). Matters of taxation are governed by various constitutional provisions, including Ohio Const. art. XII, § 2, which permits laws to be passed authorizing taxes outside the 10-mill limitation "when provided for by the charter of a municipal corporation," and Ohio Const. art. XVIII, § 13, which permits laws to be passed to limit the power of municipalities to levy taxes. *See also* Ohio Const. art. XII, § 2a; note 4, *infra*. State statutes governing procedures for levying real property taxes and allocating taxes within the 10-mill limitation thus are matters of a general nature, statewide in their scope, that cannot be modified by charter. *See State ex rel. Mill Creek Metro. Park Dist. Bd. of Comm'rs v. Tablack*. The fact that a township may have adopted a limited home rule government, similarly, does not affect the analysis set forth in this opinion. *See* R.C. 504.04. For purposes of this opinion, we use statutory language regarding the officials who carry out various functions, with the understanding that in Summit County the functions will be performed by the appropriate officials in accordance with the Summit County Charter. *See* 1985 Op. Att'y Gen. No. 85-039.

inside millage that is not required by law to be allocated to a particular taxing unit.

4. If the boundaries of annexed township territory are not conformed to those of the municipality before the county auditor submits the abstract of real property to the Tax Commissioner but are so conformed before the end of the year, the property in that territory is subject to a tax levied by the township only if the territory is part of the township when the township certifies the tax to the county auditor pursuant to R.C. 5705.34 for inclusion on the tax list and duplicate pursuant to R.C. 319.28. (1995 Op. Att'y Gen. No. 95-010, approved and followed.)

5. If township territory has been annexed into a municipal corporation and township boundaries have not been conformed to those of the municipality, but taxes are calculated and levied as if the boundaries had been conformed, the actions of public officials taken to calculate and levy the taxes are presumed to be valid and of legal effect, and may be modified or corrected only in accordance with provisions of statute or through proper administrative or judicial procedures.

6. If the boundaries of annexed township territory are not conformed to those of the municipality at the time of an election, residents of the overlapping territory may vote on both township and municipal issues. Tax levies that are approved by township voters are levied throughout the township according to the township boundaries in existence when the township certifies the tax to the county auditor pursuant to R.C. 5705.34 for inclusion on the tax list and duplicate pursuant to R.C. 319.28, unless a specific statute provides to the contrary.

Discussion of legal principles addressed in 2005 Op. Att'y Gen. No. 2005-024

Before addressing your specific questions, it is helpful to summarize and expand upon some general legal principles addressed in 2005 Op. Att'y Gen. No. 2005-024. A basic understanding of the relationship between townships and municipalities and of the principles governing Ohio's real property tax is necessary for a resolution of your concerns.

As discussed in 2005 Op. Att'y Gen. No. 2005-024, the incorporation of township territory into a municipal corporation does not necessarily prevent the territory from being part of a township. Rather, it is possible for territory to be located in both a township and a municipal corporation. 2005 Op. Att'y Gen. No. 2005-024 at 2-239 to 2-240; *accord* 1993 Op. Att'y Gen. No. 93-019 at 2-103. In some circumstances, however, territory that is located in a municipality is not included in any township. *See* R.C. 503.09; R.C. 703.22. In particular, if the boundaries of a municipality and a township are identical, the township offices are abolished and the governmental duties are transferred to the corresponding officers of the municipality. *See* R.C. 703.22.

There are many statutes that permit municipalities and townships to gain or lose territory in various ways. *See* R.C. Chapters 503, 703, and 709; 2005 Op. Att'y Gen. No. 2005-024 at 2-240 to 2-241. If townships and municipalities contain territory that is common to both, there are various procedures by which territory that is included in a municipality may be excluded from a township. In particular, R.C. 503.07 permits the legislative authority of the municipal corporation to petition the board of county commissioners to change township lines in order to make them identical, in whole or in part, with the municipal limits, or to erect a new township out of the portion of the township included within the municipal limits. In accordance with R.C. 703.22, the township government within the municipal limits is abolished when the township boundaries conform to those of the municipality. As discussed in 2005 Op. Att'y Gen. No. 2005-024, at 2-242 to 2-243, the applicability of R.C. 503.07 is restricted in some instances, and there are circumstances in which land annexed to a municipality cannot be excluded from a township. *See, e.g.,* R.C. 709.023(H); R.C. 709.024(H); R.C. 709.16(H).[3]

If part of a township is annexed to a municipal corporation by means of an annexation other than a merger, and if no action is taken to change the township boundary lines, the annexed territory remains part of the township, inhabitants residing in the annexed territory are residents of both the municipal corporation and the township, and, unless a statute provides a specific exclusion, those residents are entitled to vote on both municipal and township officers, issues, and tax levies and are obligated to pay both taxes levied by the municipal corporation and taxes levied by the township. 2005 Op. Att'y Gen. No. 2005-024 (syllabus, paragraphs 2 and 3); *accord* 1993 Op. Att'y Gen. No. 93-019.

For purposes of Ohio property tax law, a taxing unit is a "subdivision or other governmental district having authority to levy taxes on the property in the district or issue bonds that constitute a charge against the property of the district." R.C. 5705.01(H); *see also* R.C. 5705.01(A), (C), and (I). Taxes levied by various taxing units may include both taxes within the 10-mill limitation (unvoted taxes) and taxes outside the 10-mill limitation (taxes authorized by the voters). R.C. 5705.04; R.C. 5705.06-.07.[4]

Each parcel of real property in Ohio is subject to taxation by every taxing

[3] If a municipality annexes township territory that is excluded from the township, the municipality is required by R.C. 709.19 to make certain payments to the township to compensate for lost tax revenues. *See* 2005 Op. Att'y Gen. No. 2005-024 at 2-243 n.5.

[4] The 10-mill limitation is established by Ohio Const. art. XII, § 2 and R.C. 5705.02. Ohio Const. art. XII, § 2 states, in part: "No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value," except that laws may be passed to reduce

unit within which it is located. There are numerous taxing units, including, for example, townships, municipal corporations, counties, school districts, township police or fire districts, joint fire or ambulance districts, joint recreation districts, township waste disposal districts, community or technical college districts, joint-county alcohol, drug addiction, and mental health service districts, metropolitan park districts, sanitary districts, road districts, and other districts that are empowered to levy real property taxes. R.C. 5705.01(A) and (H); *see* 1993 Op. Att'y Gen. No. 93-019 at 2-103 ("[e]ach parcel of land in Ohio may be located in, and subject to taxation by, a variety of overlapping political subdivisions or other taxing units").

If part of a township is annexed to a municipal corporation by means of an annexation other than a merger, this annexed territory becomes part of the municipality (which is a taxing unit) and, if it is not removed from the township, remains part of the township (which is also a taxing unit). The overlapping area is not a separate taxing unit. The annexation does, however, impose another layer of taxes upon the territory so annexed, subjecting that territory to taxation by the municipality, in addition to taxation by the township and by whatever other taxing units encompass each parcel of real property. For example, one parcel in that overlapping area may be included in various other taxing units, such as a county, a school district, a joint fire district, and a township waste disposal district. Another parcel in that same overlapping area may be within the same municipality, township, and county but may be in a different school district and may be outside the township waste disposal district. The taxes levied upon a particular parcel depend upon the boundaries of each of the taxing units.

It is the duty of the appropriate public officials to determine which taxing units encompass a particular parcel of real property and to impose and collect taxes accordingly. *See* 2005 Op. Att'y Gen. No. 2005-024 at 2-250 ("[r]eal property taxes must be assessed and collected on the basis of the location of the property, with appropriate amounts levied for each of the subdivisions or other taxing units within which the territory is located. Each political subdivision is permitted to levy taxes upon property within its boundaries, as authorized by statute" (citations omitted)). The various public officials have only the powers and duties that are expressly granted by statute or necessarily implied from the express grants. *See, e.g., Cincinnati Sch. Dist. Bd. of Educ. v. Hamilton County Bd. of Revision*, 87 Ohio St. 3d 363, 367, 721 N.E.2d 40 (2000) ("[a] board of revision is a creature of statute and is limited to the powers conferred upon it by statute"); 1994 Op. Att'y Gen. No. 94-066 at 2-324 (county auditor).

It should be noted that these basic principles are not new. They have been established law in Ohio for many years. More than twenty years ago, the Attorney General advised the Van Wert County Prosecuting Attorney, with regard to the

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taxes for certain homesteads on the basis of age or disability. R.C. 5705.02 states that "[t]he aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit shall not in any one year exceed ten mills on each dollar of tax valuation of such subdivision or other taxing unit, except for taxes specifically authorized to be levied in excess thereof."

conformation of township boundary lines resulting from annexations since 1874: "if a municipality does not, after annexing township territory, initiate the procedure set forth in R.C. 503.07, such annexed township territory continues to be a component part of the township in which it was situated prior to municipal annexation." 1984 Op. Att'y Gen. No. 84-051 (syllabus). That opinion cited 1977 Op. Att'y Gen. No. 77-031 and 1954 Op. Att'y Gen. No. 4642, p. 648. The 1977 opinion reached the same conclusion on the basis of *State ex rel. Halsey v. Ward*, 17 Ohio St. 543 (1867), and 1924 Op. Att'y Gen. No. 1213, vol. I, p. 82. Both the 1977 and 1954 opinions comment upon the advisability, when a municipality annexes a part of a township, of following the provisions of R.C. 503.07 as a matter of course in order to avoid burdensome and inequitable situations that might otherwise occur. 1977 Op. Att'y Gen. No. 77-031 at 2-115; 1954 Op. Att'y Gen. No. 4642, p. 648 at 653 (overruled in part on other grounds by 1959 Op. Att'y Gen. No. 91, p. 42). More recent discussions of the same principles appear in 2002 Op. Att'y Gen. No. 2002-023 (Union County), 1993 Op. Att'y Gen. No. 93-019 (Portage County), and 1990 Op. Att'y Gen. No. 90-048 (Wayne County). A review of these authorities will provide you with additional background concerning the principles discussed in this opinion and their application to particular situations.

Outline of procedures for levying real property taxes

In order to properly address your questions, it is helpful also to outline the procedures established by statute for the levying of real property taxes. January first is the date on which the lien attaches and the date as of which the assessed value of real property is determined. *See* R.C. 323.11; R.C. 5715.01; R.C. 5715.19; *Freshwater v. Belmont County Bd. of Revision*, 80 Ohio St. 3d 26, 29-30, 684 N.E.2d 304 (1997) ("the first day of January of the tax year in question is the crucial valuation date for tax assessment purposes. The essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time" (citation omitted)); *State ex rel. Rolling Hills Local Sch. Dist. Bd. of Educ. v. Brown*, 63 Ohio St. 3d 520, 521, 589 N.E.2d 1265 (1992) ("assessing real property for taxation includes assigning parcels to taxing districts and recording them accordingly on the tax list"). The lien continues until the taxes (including penalties, interest, or other charges) are paid. R.C. 323.11. The amount of taxes due is determined after the lien attaches, and the taxes are levied at a later time, as discussed below.

The State Tax Commissioner directs and supervises the process of assessing real property for purposes of taxation, and the county auditor is the assessor of real property in the county. R.C. 5713.01; R.C. 5713.03; R.C. 5715.01. Reappraisals are undertaken periodically. *See, e.g.*, R.C. 5713.01; R.C. 5715.24; R.C. 5715.33-.34.

Each year on the second Monday of June, the county auditor is required to lay before the county board of revision[5] "the returns of his assessment of real property for the current year," and the board proceeds to revise the assessment and returns of the real property. R.C. 5715.16. The board makes necessary corrections if

[5] By statute, the county board of revision consists of the county auditor, the county treasurer, and the president of the board of county commissioners. R.C.

it finds that any property has been improperly listed as to the name of the owner or the description of the property, or has been incorrectly valued or omitted and not yet valued. *Id.* After this work is completed, the county auditor is required to provide notice that the valuations are open for public inspection. R.C. 5715.17. The county board of revision, or a hearing board appointed by the county board of revision, hears complaints concerning the valuation or assessment of real property, and its decisions are subject to appeal to the Board of Tax Appeals. R.C. 5715.02; R.C. 5715.11; R.C. 5715.19-.20; R.C. 5717.01; R.C. 5717.03.[6]

On or before the first Monday of August, the county auditor is required to compile and make up the general tax list of real and public utility property in the county, including a description of each tract, lot, or parcel of real estate, its owner, the value of the property, and the various subdivisions or other taxing units in which the property is located, and to prepare a duplicate of the list. R.C. 319.28. The county auditor cannot make up the tax list and duplicate until the board of revision has completed its correction of property assessments pursuant to R.C. 5715.16.

Immediately after the board of revision has acted upon the current year's as-

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5715.02. In a charter county, the officials with corresponding duties serve as the county board of revision. *See* 1985 Op. Att'y Gen. No. 85-039.

[6] The county board of revision is authorized to consider appeals regarding the placement of particular parcels in particular taxing units. *See* R.C. 5715.02; R.C. 5715.11; R.C. 5715.17, R.C. 5715.19; *Weathersfield Township v. Trumbull County Budget Comm'n*, 69 Ohio St. 3d 394, 395, 632 N.E.2d 1281 (1994) ("[d]isputes by taxing authorities over incorrect listings of property [including the listing of township territory located within a city] are appealable to the county board of revision"); *State ex rel. Rolling Hills Local Sch. Dist. Bd. of Educ. v. Brown*, 63 Ohio St. 3d 520, 521, 589 N.E.2d 1265 (1992) (pursuant to R.C. 5715.11 and R.C. 5715.19(A), "a school board may appeal the incorrect recording of a property on the tax list [specifically, the recording of property in the wrong school district] since the recording is a part of the assessment, and the board of revision has the power to correct this"); *Braceville Township v. Trumbull County Budget Comm'n*, No. 93-M-1243, 1995 Ohio Tax LEXIS 1038, *11 (BTA Aug. 25, 1995) ("[i]f the auditor has incorrectly identified a parcel of land as either within or outside of a certain taxing district, such an incorrect listing should be addressed by the county board of revision"). Decisions made by the county board of revision may be appealed to the Board of Tax Appeals or to the courts in accordance with R.C. Chapter 5717. *See* R.C. 5717.03(F) ("[t]he orders of the board [of tax appeals] may affirm, reverse, vacate, modify, or remand the tax assessments, valuations, determinations, findings, computations, or orders complained of in the appeals determined by the board, and the board's decision shall become final and conclusive for the current year unless reversed, vacated, or modified as provided in section 5717.04 of the Revised Code. When an order of the board becomes final the tax commissioner and all officers to whom such decision has been certified shall make the changes in their tax lists or other records which the decision requires"). These decisions may order changes relating to taxing unit boundaries.

sessments as required by R.C. 5715.16 and the notice required by R.C. 5715.17 has been given, the county auditor must "make out and transmit to the tax commissioner an abstract of the real property of each taxing district in his county, in which he shall set forth the aggregate amount and valuation of each class of real property in such county and in each taxing district therein as it appears on his tax list or the statements and returns on file in his office" and also an abstract of the property appearing on the current year's agricultural land tax list. R.C. 5715.23; 16 Ohio Admin. Code 5703-25-10; *see also* note 12, *infra*. The Tax Commissioner reviews the abstract and orders the county auditor to make appropriate changes. R.C. 5715.23-.26.[7]

On or before the first Monday of September, the auditor must correct the tax list and duplicate in accordance with the additions and deductions ordered by the Tax Commissioner and the county board of revision. R.C. 319.28; R.C. 5715.14; *see also* 16 Ohio Admin. Code 5703-25-16(C)(4). The county auditor is permitted by R.C. 319.35 and R.C. 5713.19 to make changes to correct clerical errors. The county auditor is also required to comply with orders of the Board of Tax Appeals and the courts.

While the assessment process is going on, taxing units are required to adopt tax budgets or submit other required information, with a deadline of January fifteenth for school districts and July fifteenth for other taxing units. R.C. 5705.28-.281. The county auditor submits the budgets to the county budget commission,[8] along with estimates of amounts to be received from various sources. R.C. 5705.31. The county budget commission approves and adjusts levies and certifies to each taxing authority the rate of each tax to be levied within its subdivision or taxing unit. R.C. 5705.31; R.C. 5705.34.[9]

On the basis of the certification from the county budget commission, each taxing authority must authorize the tax levies necessary to raise funds for its tax budget and certify them to the county auditor before the first day of October or at such later date as is approved by the Tax Commissioner, with other dates set for school districts and certain township park districts. R.C. 5705.34. The county budget commission is required to reconsider and revise its action on a budget on the basis

[7] The county auditor may appeal the Tax Commissioner's orders in accordance with R.C. Chapter 5715. R.C. 5715.251.

[8] By statute, the county budget commission consists of the county auditor, the county treasurer, and the county prosecuting attorney. R.C. 5705.27. In a charter county, the officials with corresponding duties serve as the county budget commission. *See* 1985 Op. Att'y Gen. No. 85-039.

[9] Pursuant to R.C. 5705.341, no tax may be levied "unless such rate of taxation for the ensuing fiscal year is clearly required by a budget of the taxing district or political subdivision properly and lawfully adopted under this chapter, or by other information that must be provided . . . if a tax budget was waived." *See Wise v. Summit County Budget Comm'n*, 36 Ohio St. 2d 114, 304 N.E.2d 390 (1973); 2005 Op. Att'y Gen. No. 2005-002 at 2-14.

of certain election returns or the issuance or sale of certain refunding bonds. R.C. 5705.34.

After receiving from various officers and authorities the rates or amounts of taxes to be levied for the current year, the county auditor determines the amounts to be levied on each tract and lot of real property, adding taxes that have been omitted or are delinquent, including penalties and interest, and enters those amounts on the tax list and duplicate. R.C. 319.30. If levies are not certified by the time prescribed by R.C. 5705.34 and an appeal is pending, the county auditor may use an estimated rate and make a correction later in the manner for correcting a clerical error. *Id.*

The county auditor must deliver a copy of the tax list to the county treasurer on the first day of October or, if that date is extended pursuant to statute, on the first Monday of December. R.C. 319.28; R.C. 323.17. In case of emergency, the Tax Commissioner may, by journal entry, extend the time for delivery of the duplicate for an additional fifteen days. R.C. 323.17. The date of delivery of the tax duplicate has been referred to as the tax assessment date. *Pub. Square Tower One v. Cuyahoga County Bd. of Revision*, 34 Ohio App. 3d 49, 52, 516 N.E.2d 1280 (Cuyahoga County 1986); *see also Hoglen v. Cohan*, 30 Ohio St. 436 (1876) (syllabus, paragraph 2) ("taxes charged against the land become due and payable . . . on the 1st day of October annually, that being the date on which the duplicate of taxes is required by law to be placed in the possession of the county treasurer"); 1993 Op. Att'y Gen. No. 93-064 (syllabus, paragraph 1) ("[r]eal property taxes become due and payable for purposes of R.C. 323.47 when the tax duplicate on which they appear is delivered to the county treasurer for collection pursuant to R.C. 319.28"); *see also State ex rel. Ney v. DeCourcy*, 81 Ohio App. 3d 775, 779-80, 612 N.E.2d 386 (Hamilton County 1992) (once the tax duplicate has been certified to the county treasurer, the county auditor may correct clerical errors as provided in R.C. 319.35, but may not make fundamental changes, such as reducing the value of property on the tax duplicate, without resort to the board of revision).

The Tax Commissioner is required each year to determine tax reduction factors for each tax authorized to be levied by each taxing district, and is empowered to order a county auditor to furnish any information required for that determination. R.C. 319.301. If the Tax Commissioner is unable to make that determination by the last day of November because necessary information is not available, the Tax Commissioner may compute and certify an estimated tax reduction factor to be used to determine the taxes due that year. R.C. 319.301(H).

The real property taxes must be paid on or before December thirty-first, or one-half must be paid then and the remainder on or before the following June twentieth, unless the date for delivery of the tax duplicate has been extended, in which case the times for payment may be extended to January thirty-first and July twentieth. R.C. 323.12; R.C. 323.17.

With this background in mind, we turn to your specific questions.

Question 1: How should these new taxing districts be treated on the Abstract of Real Property Values? Should it be abstracted as a new annex-

ation to create the new district or would we first be required to reverse the original annexation action on the abstract to place the property back in the parent township before we could then annex it to the newly created taxing district? Would the result of either action have the same effect on the resultant reduction factor?

This initial question refers to "new taxing districts." The use of this term may cause some confusion. Although not defined by statute, the term "taxing district" is commonly used to refer to a subdivision or other unit of government that is authorized to levy taxes on territory within its boundaries. *See, e.g.,* R.C. 307.15 (referring to "any municipal corporation, township, port authority, water or sewer district, school district, library district, health district, park district, soil and water conservation district, water conservancy district, or other taxing district"); R.C. 319.301(D) (referring to "each tax authorized to be levied by each taxing district"); R.C. 5713.01(B) (county auditor's assessment of "real estate in any township, municipal corporation, or other taxing district"); *Hammond v. Winder*, 100 Ohio St. 433, 126 N.E. 409 (1919) (syllabus, paragraph 2) (duty of Tax Commission to annually determine whether real and personal property "in the different counties, cities, villages and taxing districts have been assessed at their true value in money"); *see also* R.C. 5705.01(A) (the term "[s]ubdivision" includes many governmental units that are designated as districts, including various police, fire, and ambulance districts, joint recreation districts, community and technical college districts, and school districts); R.C. 5705.01(H) (defining "[t]axing unit" to mean "any subdivision or other governmental district having authority to levy taxes on the property in the district or issue bonds that constitute a charge against the property of the district, including conservancy districts, metropolitan park districts, sanitary districts, road districts, and other districts"). Used in this sense, the term "taxing district" refers to each of the taxing units discussed above that may levy taxes within its boundaries. The creation of a "new" taxing district would result upon the creation of a new subdivision, such as a new township, or upon the creation of one of the other districts included in R.C. 5705.01(H), such as a road district. It does not appear, however, that this is the meaning of the term "taxing district" as used in your question for, as discussed above, the taxation of territory that is located both within a township and within a municipality does not require the creation of a new taxing district but, rather, involves taxation by two previously-existing taxing districts.[10]

It appears, rather, that, as used in your question, the term "taxing district" may refer to an area in which taxes are levied by a particular combination of overlap-

[10] There are circumstances in which a new township may be created to take the place of a township from which territory has been removed, and the new township will function as a new taxing unit, in place of the township in which the territory was previously located. *See* R.C. 503.09; *see also* R.C. 319.51. A change of boundaries may also operate to remove certain territory from a township, which is a taxing unit. R.C. 503.07; R.C. 703.22. These do not appear to be the circumstances addressed in your question.

ping taxing units – that is, to each particular area in which a unique set of taxing districts can levy taxes. The term "taxing district" may be used in this special sense for limited purposes. *See, e.g., Braceville Township v. Trumbull County Budget Comm'n*, No. 93-M-1243, 1995 Ohio Tax LEXIS 1038, *2 (BTA Aug. 25, 1995) (controversy involves overlapping subdivisions "identified as 'taxing districts' by the Trumbull County Auditor" and designated as "Braceville Township/Newton Falls City/Newton Falls School District (District 63) and Braceville Township/Newton Falls City/LaBrae School District (District 64)"); 16 Ohio Admin. Code 5703-25-09(A)(1) (county auditor's property records for each lot, tract, or parcel of real property in the county shall provide, *inter alia*, the "[n]ame of the taxing district"); *see also* 16 Ohio Admin. Code 5703-25-45(A)(7) (as used in rules 5703-25-45 to 5703-25-49 for purposes of computing the tax reduction factor, "[t]axing district" means "a municipal corporation or township, or part thereof, in which the aggregate rate of taxation, as expressed in mills, is uniform"). In this sense, the term "new taxing district" refers to an area in which a new combination of overlapping taxing units exists – in the instant case, the territory located in both the township and the municipality, in addition to other existing taxing units. The creation of one or more "new taxing districts" (consisting of a different combination of overlapping taxing units) occurs if, as discussed in 2005 Op. Att'y Gen. No. 2005-024, territory remains part of a township after it is annexed into a municipality.

It is beyond the scope of this opinion to determine rights or liabilities regarding taxes that might have been, but were not, levied or collected in the past. Those matters require fact finding and dispute resolution that exceed the capacity of the opinions function and are appropriately left to the parties involved or to the judiciary. *See, e.g.*, 2005 Op. Att'y Gen. No. 2005-002 at 2-12 ("[w]e are not able, by means of this opinion, to make findings of fact or to determine the rights of particular parties"); 2004 Op. Att'y Gen. No. 2004-022 at 2-186 (citing various opinions). We address this opinion, instead, to actions that can be taken now or in the future to comply with applicable statutory requirements.

Your question asks about making changes in the annexation process in order to properly tax real property in Summit County. The precise procedures you propose are not clear. With regard to the inclusion of real property on the abstract of real property values, the Revised Code states that, on an annual basis, the county auditor must "make out and transmit to the tax commissioner an abstract of the real property of each taxing district in his county, in which he shall set forth the aggregate amount and valuation of each class of real property in such county and in each taxing district therein as it appears on his tax list or the statements and returns on file in his office." R.C. 5715.23. With regard to the inclusion of real property on the tax list, the county auditor is required annually to compile and make up a general tax list of real and public utility property in the county, containing the names of the owners of real property "in each township, municipal corporation, special district, or separate school district, or part of either in his county." R.C. 319.28; *see Weathersfield Township v. Trumbull County Budget Comm'n*, 69 Ohio St. 3d 394, 395, 632 N.E.2d 1281 (1994) (the county auditor's tax list "itemizes parcels, their owners, their values, and the taxing districts in which the parcels are located");

State ex rel. Rolling Hills Local Sch. Dist. Bd. of Educ. v. Brown, 63 Ohio St. 3d at 521. The county auditor prepares a duplicate of the list for the county treasurer, and the duplicate is used for the collection of real property taxes. R.C. 319.28; R.C. 323.13. Other procedures relating to the levying of real property taxes are detailed in the outline set forth above.

With regard to the county auditor's responsibility to determine the taxing districts within which the various parcels lies, the Ohio Supreme Court has stated:

> We conclude . . . that assessing real property for taxation includes assigning parcels to taxing districts and recording them accordingly on the tax list.
>
> Moreover, the correct listing of a parcel underlies the integration of the listing function into the assessment process. The listing is important to a taxpayer because rates and, consequently, tax billings change according to the taxing district in which the property is situated. This listing is also important to the [taxing unit, in this case a school district] because the total amount of taxes it is due changes with the number of properties listed as being in its district.

State ex rel. Rolling Hills Local Sch. Dist. Bd. of Educ. v. Brown, 63 Ohio St. 3d at 521.

Hence, it is the responsibility of the county auditor to place real property on the abstract of real property values and on the tax list and duplicate and to denote each taxing unit in which the property is located. The county auditor must include each appropriate taxing unit, even if the unit was not included the previous year. The county auditor's duty to prepare a proper abstract and a proper tax list and duplicate applies anew each year, and errors in previous years do not eliminate the duty to comply with current statutory requirements. *See* R.C. 319.28; R.C. 5715.16; R.C. 5715.23.[11]

You have asked how the taxing districts reflecting the overlapping township

[11] The county auditor is required to keep on file for public inspection various records relating to property taxation, including a set of all tax maps showing land unit prices and a property record card or sheet for each parcel of real property. R.C. 5713.01(D); 16 Ohio Admin. Code 5703-25-14. The board of county commissioners may designate the county engineer to provide for making a complete set of tax maps of the county and keeping them up to date. The maps must show all parcels and subdivisions of land, with the names of owners and the dates of transfers. R.C. 5713.09.

With regard to taxing units, various statutes specify how the county auditor is to be notified of boundary changes. *See, e.g.*, R.C. 3311.22 (when school district territory is transferred upon the proposal of the governing board of an educational service center, the governing board "offering the territory shall file with the county auditor and with the state board of education an accurate map showing the boundaries of the territory transferred"). The board of county commissioners is given

and municipal taxing units should be included on the abstract of real property values. The county auditor should include them in the same manner in which other property is included on the abstract of real property values, and also on the tax list and duplicate, following the procedures outlined above.

You have asked specifically how the conclusions set forth in 2005 Op. Att'y Gen. No. 2005-024 affect the reduction factor. That factor is determined in accordance with R.C. 319.301 and does not apply to inside millage, to taxes levied at whatever rate is required to produce a specified amount of tax money or an amount to pay debt charges, or to taxes provided for by municipal charter. R.C. 319.301(A).

The tax reduction factor is a figure intended to produce the same number of dollars each year from the same properties, rather than allowing tax proceeds to increase with inflation. R.C. 319.301; *see also* Ohio Const. art. XII, § 2a; *State ex rel. Swetland v. Kinney*, 69 Ohio St. 2d 567, 433 N.E.2d 217 (1982); 2005 Op. Att'y Gen. No. 2005-002 at 2-14 to 2-18. The reduction factor is calculated by the State Tax Commissioner each year, in accordance with procedures set forth in R.C. 319.301(C) and (D). *See Bd. of Educ. of Springfield Local Sch. Dist. v. Lucas County Budget Comm'n*, 71 Ohio St. 3d 120, 642 N.E.2d 362 (1994).

R.C. 319.301(D)(1) requires the Tax Commissioner, with respect to each tax authorized to be levied by each taxing district, to:

> Determine by what percentage, if any, *the sums levied by such tax against the carryover property in each class would have to be reduced for the tax to levy the same number of dollars against such property in that class in the current year as were charged against such property by such tax in the preceding year* subsequent to the reduction made under this section but before the reduction made under section 319.302 [319.30.2] of the Revised Code. In the case of a tax levied for the first time that is not a renewal of an existing tax, the commissioner shall determine by what percentage the sums that would otherwise be levied by such tax against carryover property in each class would have to be reduced to equal the amount that would have been levied if the full rate thereof had been imposed against the total taxable value of such property in the preceding tax year. (Emphasis added.)

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responsibility for determining and recording township boundaries. *See Berlin v. Kilpatrick*, 15 Ohio Op. 2d 73, 76, 172 N.E.2d 339 (C.P. Trumbull County 1958) ("'the board of county commissioners is the authority in whom the power to change the boundaries of a civil township is placed'"); R.C. 503.02 (authority of board of county commissioners to change township boundaries); R.C. 503.04 (duty of board of county commissioners to record changes in township boundaries in a book kept for that purpose); R.C. 503.05 (board of county commissioners adjusts disputed township boundary lines); R.C. 503.07 (upon petition, board of county commissioners changes township lines); R.C. 503.08; R.C. 503.13 (the petition, map, and order for the erection of a new township under R.C. 503.09 to R.C. 503.12, certified by the county auditor, shall be recorded in the plat book in the office of the county recorder).

See also 16 Ohio Admin. Code 5703-25-45(D)(1) (''[t]he tax reduction factor shall equal the per cent by which the sums levied by each tax against the carryover property in each class of real property would have to be reduced so that the current year's taxes on carryover property equals the prior year's net taxes'').

''Carryover property'' is defined as all real property on the current year's tax list except land and improvements that were not taxed by the district in both the preceding year and the current year, or were not in the same class[12] in both the preceding year and the current year. R.C. 319.301(B)(2). Hence, property that was not taxed in the preceding year is not carryover property used in calculating the tax reduction factor.

The Tax Commissioner must make other adjustments to certain of the tax reduction percentages, *see* R.C. 319.301(E), and then certify each percentage and the class of property to which it applies to the auditor of each county in which the taxing district has territory. R.C. 319.301(D). The auditor must determine the taxes levied upon each tract of real property as provided in R.C. 319.30, and then reduce the sum to be levied by each tax against each parcel of real property in the district by the percentage so certified for its class. *Id.* The statute specifies that ''[a] percentage or a tax reduction factor determined or computed by the commissioner under this section shall be used solely for the purpose of reducing the sums to be levied by the tax to which it applies for the year for which it was determined or computed. It shall not be used in making any tax computations for any ensuing tax year.'' R.C. 319.301(H).

The terms of R.C. 319.301 indicate that the reduction factor is calculated annually and applies for only one year. It is based on carryover property, excluding any property that was not taxed in both the preceding year and the current year. Therefore, territory that is not included in a subdivision for purposes of taxation one year does not affect the reduction factor calculated for that subdivision's levies the following year, and territory that is included one year but not the following year is similarly excluded from the calculation of the tax reduction factor.

The determination of the tax reduction factor and of the property to which it is applied can make a substantial difference in the amount of tax collected under a particular tax levy in a particular year. *See, e.g., Bd. of Educ. of Springfield Local Sch. Dist. v. Lucas County Budget Comm'n*; *McCormack v. Limbach*, No. 54133, 1988 Ohio App. LEXIS 348 (Cuyahoga County Feb. 4, 1988), *reversing in part and remanding McCormack v. Limbach*, No. 84-A-893; 1987 Ohio Tax LEXIS 518 (BTA June 12, 1987);[13] *McNamara v. Kinney*, No. 81-D-33, 1981 Ohio Tax LEXIS 273 (BTA July 13, 1981), *aff'd*, 70 Ohio St. 3d 63, 434 N.E.2d 1098 (1982). Hence,

[12] Real property is classified according to its uses into two classes: residential/agricultural and nonresidential/agricultural (including minerals or rights to minerals). R.C. 5713.041; *see also* Ohio Const. art. XII, § 2a.

[13] The *McCormack* case involved a situation in which, due to a clerical error in keypunching, the value of a piece of real estate was entered as $510,035,900 instead of $35,900. The tax reduction rate was calculated on the basis of that erroneous in-

any errors or changes in these figures are of considerable significance to the taxing units affected.

No statute expressly addresses the tax reduction factor in connection with a situation in which real property taxed by a municipality is erroneously excluded from taxation by the township in which it is also located. R.C. 319.301 does, however, address the situation in which the taxable value of carryover property is changed on the basis of complaints filed under R.C. 5715.19, stating: "The tax commissioner shall account for such changes in making the determinations only for the tax year in which the change in valuation is reported. Such a valuation change shall not be used to recompute the percentages determined under division (D)(1) of this section for any prior tax year." R.C. 319.301(I).

In addition, provision is made for the use of an estimated tax reduction factor if the Tax Commissioner is unable to certify a tax reduction factor in a taxing district located in more than one county by the last day of November because required information is unavailable. In that case, the computation of the actual tax reduction factor is to be made when the information becomes available, and the required addition or subtraction of taxes is made in the ensuing tax year. R.C. 319.301(H).

It thus appears, in general, that the reduction factor is to be computed each year on the basis of information then available. This general approach avoids the complications that would result if the reduction factor were recomputed for a past year, and each subsequent year's taxes and reduction factors then needed to be recomputed.

The Department of Taxation has also adopted a rule regarding the correction of errors impacting upon the tax reduction factor or the composite tax reduction factor.[14] 16 Ohio Admin. Code 5703-25-48. Division (A) of rule 5703-25-48 governs instances in which estimated tax reduction factors are used, and provides

formation, resulting in the underpayment of taxes legally chargeable against owners of real property in the Cleveland School District in an amount of approximately $2,700,000. Considering the BTA's decision on appeal, the court upheld the Tax Commissioner's order to the county auditor to correct the error by collecting the 1982 undercharged amounts in conjunction with the collection of then current property taxes, finding the order subject to limitations upon collections imposed by R.C. 319.40, and remanded the case to the Tax Commissioner to determine the method by which the auditor should calculate the omitted taxes. *McCormack v. Limbach*, No. 54133, 1988 Ohio App. LEXIS 348 (Cuyahoga County Feb. 4, 1988), *reversing in part and remanding McCormack v. Limbach*, No. 84-A-893, 1987 Ohio Tax LEXIS 518 (BTA June 12, 1987).

[14] 16 Ohio Admin. Code 5705-25-46 contains the following definition of "composite tax reduction factor":

> As used in this rule and rule 5703-25-47 of the Administrative Code, "composite tax reduction factor" means the total percentage reduction in the taxes charged against each tract, lot, or parcel in a given

that overpayments or underpayments are corrected when the actual information is received, with sums added to or subtracted from the amounts due for the current tax year following the tax year for which the estimated tax reduction factors were used. Division (B) applies to all other circumstances, as follows:

> If the tax commissioner determines that the tax reduction factors or the composite tax reduction factor for either class of real property used on the tax bills for the first half collection of real property taxes was illegal or erroneous, the commissioner may order a correction at any time prior to the mailing of the tax bill for the second half collection of taxes for the same tax year.
>
> The correction shall adjust the tax reduction factors and the composite tax reduction factor used on the tax bills for the second half collected for such year so that the sum of the taxes charged against each parcel of property in the first half collection and the second half collection equals the total amount of taxes that should have been charged against such property for that tax year if a correct and legal tax reduction factor had been used on the tax bill for both collection periods.

With regard to errors discovered after the time period addressed in division (B), division (C) states:

> If the tax commissioner determines that the tax reduction factors or the composite tax reduction factor for a class of property was illegal or erroneous after the time for a correction permitted under paragraph (B) of this rule, the commissioner shall determine the correct tax reduction factor that should have been used for that year. In computing tax reduction factors for the following tax year, the commissioner shall use, as the net taxes for the year for which the illegal or erroneous tax reduction factors were used, the amount of net taxes for that year if the correct tax reduction factors had been used. Except as provided in division (H) of section 319.301 of the Revised Code and paragraph (A) of this rule, the commissioner shall not adjust the tax reduction factors for such subsequent tax year in order to add to or subtract from the taxes charged and payable for that year any amount that represents an overpayment or underpayment resulting from the use of the illegal or erroneous tax reduction factor in the preceding year.

Thus, prescribed procedures apply to the manner in which the Tax Commissioner corrects errors in tax reduction factors.

As discussed above, the authority to calculate the tax reduction factor has been delegated to the State Tax Commissioner. R.C. 319.301; *see Bd. of Educ. of Springfield Local Sch. Dist. v. Lucas County Budget Comm'n*, 71 Ohio St. 3d at

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> class of real property located in a given taxing district provided under section 319.301 of the Revised Code and rule 5703-25-45 of the Administrative Code.

122. County officials must use the tax reduction factor provided by the Tax Commissioner, and that factor may be changed only through proper administrative or judicial proceedings. *See, e.g.*, R.C. 5717.02 (appeal to Board of Tax Appeals); 16 Ohio Admin. Code 5703-25-46(F) (''[n]o county auditor shall use a composite tax reduction factor other than the composite tax reduction factor certified to the auditor [by the tax commissioner] under paragraph (B)(2) of this rule, and no county treasurer shall prepare a tax bill using a composite tax reduction factor other than the appropriate composite tax reduction factor certified to the treasurer [by the tax commissioner] under paragraph (B)(2) of this rule''); *Bd. of Educ. of Springfield Local Sch. Dist. v. Lucas County Budget Comm'n*, 71 Ohio St. 3d at 122 (Ohio statutes ''compel the [county] auditor to apply to the parcels on the county's tax list the reduction factor certified to him by the commissioner''); *McCormack v. Limbach*. If the county auditor finds that a tax reduction factor provided by the Tax Commissioner appears to be illegal or erroneous, the auditor is directed by rule to ''notify the tax commissioner, who shall recompute the factor and certify it to the county auditor'' as provided by rule. 16 Ohio Admin. Code 5703-25-46(G). If that procedure is not satisfactory, the county auditor may appeal the factor's correctness to the Board of Tax Appeals. R.C. 5717.02; *Bd. of Educ. of Springfield Local Sch. Dist. v. Lucas County Budget Comm'n*, 71 Ohio St. 3d at 122. Hence, the determination of the reduction factor is not the responsibility of county officials and, thus, is outside the scope of this opinion.

The authorities discussed above indicate that, even if errors affect the calculation of the tax reduction factor for a particular year, that reduction factor is presumed valid and remains effective unless changed pursuant to proper legal procedures. The county auditor is authorized by statute to make certain corrections to the tax list and duplicate and to collect certain omitted taxes, but is not empowered to change the tax reduction factor except as directed by the Tax Commissioner or other proper authority.

We conclude, therefore, that when territory annexed to a municipality remains part of a township, the territory should be included on the abstract of real property and on the tax list and duplicate in the manner in which other property is included, with information reflecting that the property is located in both the township and the municipality, as well as in other appropriate taxing units, in accordance with R.C. 319.28, R.C. 5715.16, R.C. 5715.23, and other relevant provisions. The determination of the tax reduction factor is made by the Tax Commissioner, in accordance with R.C. 319.301, 16 Ohio Admin. Code 5703-25-48, and other relevant provisions.

Question 2: How should the division of inside millage be handled? Since almost all of our taxing districts are currently at the 10-mill limit, someone's inside millage would have to prevail. Should it belong to the original taxing authority or to the taxing authority to which it was originally annexed? Is there any language included in the original annexation petition that may address this?

2005 Op. Att'y Gen. No. 2005-024 addresses the division of inside millage as follows:

> Under Ohio law, up to 10 mills of property taxes may be levied without the approval of the voters, and this inside millage is allocated among various taxing authorities. *See* Ohio Const. art. XII, § 2; R.C. 5705.02-.03; R.C. 5705.07. R.C. 5705.31 establishes minimum levies within the 10-mill limitation for various subdivisions and taxing units, including townships and municipal corporations. R.C. 5705.31(D); *see* 2005 Op. Att'y Gen. No. 2005-002. R.C. 5705.315 establishes the procedure for calculating the minimum levies of the municipal corporation and township in territory annexed to a municipal corporation on or after October 26, 2001, during any tax year within which territory annexed to a municipal corporation is part of a township. The intent of the calculation is "to preserve the minimum levies of overlapping subdivisions under [R.C. 5705.31] so that the full amount of taxes within the ten-mill limitation may be levied to the extent possible." R.C. 5705.315. The municipal corporation and township are empowered to agree upon their respective minimum levies and, if they do not agree, "the municipal corporation and township shall each receive one-half of the millage available for use within the portion of the territory annexed to the municipal corporation that remains part of the township." *Id.; see also* R.C. 709.192(B)(9); R.C. 5705.31(D) (if a municipal corporation and a township agree in an annexation agreement to reallocate their shares of the minimum levies and submit the agreement with their annual tax budgets, "then, when determining the minimum levy under [R.C. 5705.31(D)], the auditor shall allocate, to the extent possible, the minimum levy for that municipal corporation and township in accordance with their annexation agreement"). Thus, the respective portions of inside millage allocated to the municipality and the township may be affected by an annexation agreement. However, persons who reside in both the municipality and the township remain responsible for paying both the taxes levied by the municipality and the taxes levied by the township, including whatever amounts are levied in accordance with R.C. 5705.31, R.C. 5705.315, and any applicable agreement.

2005 Op. Att'y Gen. No. 2005-024 at 2-246 to 2-247.

R.C. 5705.31 governs the manner in which real property taxes are levied on behalf of various taxing units and prescribes the manner in which the inside millage, consisting of 10 mills of unvoted property taxes, is allocated. *See* note 4, *supra.* R.C. 5705.31 provides minimum levies within the 10-mill limitation for the current expense and debt service of each subdivision or taxing unit, based on the average inside millage levies in effect during the last five years before the 10-mill limitation went into effect (that is, during the years 1929 through 1933). R.C. 5705.31(D); *see Bd. of Educ. of Strongsville City Sch. Dist. v. Lorain County Budget Comm'n*, 38 Ohio St. 3d 50, 51, 526 N.E.2d 297 (1988); 2005 Op. Att'y Gen. No. 2005-002 at 2-13 to 2-14 (citing *Washington Local Sch. Dist. v. Scioto County Budget Comm'n,*

73 Ohio St. 3d 700, 653 N.E.2d 1212 (1995), and Kimball H. Carey, *Anderson's Ohio School Law* § 5.14 (2004-05 ed.)); 1933 Op. Att'y Gen. No. 1808, vol. III, p. 1682. Certain levies are given priority, and specific provisions govern the minimum levy for a school district. R.C. 5705.31; *see* 2005 Op. Att'y Gen. No. 2005-002.

The manner in which inside millage is allocated pursuant to R.C. 5705.31 depends upon the number and type of taxing units that are entitled to share in the inside millage and the nature and amount of the taxes they levy. Clearly, including as taxing units both a township and a municipality, rather than one or the other, will require reallocation of the inside millage and may reduce the millage available to each taxing unit.

Since October 26, 2001, municipalities and townships involved in annexations have been permitted by R.C. 709.192(C)(9) to enter into annexation agreements in which they agree to reallocate their shares of the minimum mandated levies established pursuant to R.C. 5705.31 in areas annexed after that date. If an annexation agreement is submitted with the annual tax budgets of the appropriate subdivisions, the county auditor is required, to the extent possible, to allocate the minimum municipal and township levies in accordance with the annexation agreement. R.C. 5705.31(D).

The general rule prior to October 26, 2001, was that the allocation of the inside millage was made in accordance with R.C. 5705.31 in the territory having the most taxing units eligible to share in that millage, and (subject to express statutory exceptions) the rate so determined for each taxing unit was then levied uniformly throughout that taxing unit, in accordance with the requirement of Ohio Const. art. XII, § 2 that land and improvements be taxed "by uniform rule." As was stated in 1993 Op. Att'y Gen. No. 93-019:

> It is evident that, because of the financial needs of various taxing units, the amount of inside millage sought may exceed the amount of inside millage available. The county budget commission is given statutory responsibility for approving tax levies and for fixing the amounts that various taxing units may levy within the ten-mill limitation. Certain levies are required to be approved, and some taxing units are guaranteed minimum levies within the ten-mill limitation. The county budget commission must, however, also make adjustments and reductions, as appropriate, in order to comply with the ten-mill limitation on unvoted taxes. *See* R.C. 5705.31-.32, .34; 1979 Op. Att'y Gen. No. 79-063; 1956 Op. Att'y Gen. No. 7421, p. 813. Reduction of various levies may be necessary in the case of overlapping political subdivisions to assure that the ten-mill limitation is given effect throughout the state. *See, e.g. Cambridge City School District v. Guernsey County Budget Commission*, 11 Ohio App. 2d 77, 228 N.E.2d 874 (Guernsey County 1967), *aff'd*, 13 Ohio St. 2d 77, 234 N.E.2d 512 (1968); Op. No. 79-063; 1956 Op. No. 7421.
>
> Any tax authorized and levied by a taxing unit must be levied in a uniform amount throughout the territory upon which it is levied, unless

> otherwise provided by law. *See* Ohio Const. art. XII, § 2; *Koblenz v. Board of Revision*, 5 Ohio St. 2d 214, 215 N.E.2d 384 (1966); *Miller v. Korns*, 107 Ohio St. 287, 140 N.E. 773 (1923); Op. No. 79-063; Op. No. 69-055; 1960 Op. Att'y Gen. No. 1373, p. 356; 1956 Op. No. 7421. Thus, if a township tax levy must be reduced in one portion of the township so that the total inside millage comes within the ten-mill limitation, *see, e.g.*, R.C. 5705.31, .32; 1956 Op. No. 7421, the levy must be correspondingly reduced in other areas of the township so that the tax is levied at a uniform rate throughout the township. *See, e.g.*, Op. No. 79-063, at 2-213 (''the budget commission could not levy [a park district] tax in part of the park district while not levying the tax in municipalities [within the park district] already at the ten-mill limitation''; where mandatory minimum tax levies in aggregate equal the ten-mill limitation, no discretionary levy may be approved within the ten-mill limitation); Op. No. 69-055, at 2-119 (''[a]ny levy for the general fund of the township must be made upon all of the taxable property within the township which would necessarily include the taxable property located within the village . . . ''); 1960 Op. No. 1373; 1956 Op. No. 7421. All property within a township must be assessed the same township inside millage, regardless of whether the property is located within a municipal corporation. *See, e.g.*, Op. No. 79-063; Op. No. 69-055.

1993 Op. Att'y Gen. No. 93-019 at 2-105 to 2-106; *see also, e.g., Berea City Sch. Dist. v. Budget Comm'n of Cuyahoga County*, 60 Ohio St. 2d 50, 52, 396 N.E.2d 767 (1979) (''[w]here subdivisions overlap, . . . the total unvoted millage cannot exceed ten mills and the rate at which each particular subdivision taxes its property must be uniform throughout. Thus, R.C. 5705.13 requires the budget commission to reduce unvoted levies where necessary so that the ten-mill limit is not exceeded, particularly in the areas of subdivision overlap''); *Newton Township v. Trumbull County Budget Comm'n*, No. 93-M-1241, 1995 Ohio Tax LEXIS 1039, *4 (BTA Aug. 25, 1995) (''[p]ursuant to the constitutional uniformity requirement, a taxing unit must have equal allocations in all overlapping subdivisions. Consequently, if [a] school district's allocation is reduced in one overlapping subdivision, it must necessarily be reduced in all others''); *Newton Township v. Trumbull County Budget Comm'n*, Nos. 92-M-1313 through 92-M-1321 and 92-M-1329 through 92-M-1331, 1994 Ohio Tax LEXIS 446, *8 (BTA Mar. 18, 1994) (''[t]axation by uniform rule requires not only that all property within the state must be assessed at common levels, but also that property of persons similarly situated must be taxed at uniform rates of taxation''); 1979 Op. Att'y Gen. No. 79-063.[15]

The result of this general rule was that, if a municipality annexed territory

[15] As recognized in 1993 Op. Att'y Gen. No. 93-019, exceptions to the uniformity requirement exist only as specifically provided by statute. 1993 Op. Att'y Gen. No. 93-019 at 2-104 to 2-106; *see also, e.g.*, R.C. 5705.311 (authorizing the imposition of a different minimum municipal levy in annexed territory that is not part of the city school district or a school district of which the village is a part).

that remained part of a township, both the municipality and the township might have their inside millage reduced and, because of the uniformity requirement, there might be portions of the municipality or the township in which the entire 10-mills of inside millage could not be levied. *See, e.g., Bd. of Educ. of Strongsville City Sch. Dist. v. Lorain County Budget Comm'n*, 38 Ohio St. 3d at 50 n.2 ("[u]nder Section 2, Article XII of the Ohio Constitution, a tax rate must be applied uniformly throughout the taxing district. Thus, Columbia Township's rate must be reduced throughout its district, even though appellee [school district, receiving increased inside millage] is located in only a portion of it").

The General Assembly addressed this issue in 2001 by enacting R.C. 5705.315, which reads as follows:

> With respect to annexations granted on or after the effective date of this section [Oct. 26, 2001] and *during any tax year or years within which any territory annexed to a municipal corporation is part of a township, the minimum levy for the municipal corporation and township under section 5705.31 of the Revised Code shall not be diminished, except* that in the annexed territory and only during those tax year or years, and *in order to preserve the minimum levies of overlapping subdivisions under section 5705.31 of the Revised Code so that the full amount of taxes within the ten-mill limitation may be levied to the extent possible*, the minimum levy of the municipal corporation or township shall be the lowest of the following amounts:
>
> (A) An amount that when added to the minimum levies of the other overlapping subdivisions equals ten mills;
>
> (B) An amount equal to the minimum levy of the municipal corporation or township, provided the total minimum levy does not exceed ten mills.
>
> The municipal corporation and the township may enter into an agreement to determine the municipal corporation's and the township's minimum levy under this section. If it cannot be determined what minimum levy is available to each and no agreement has been entered into by the municipal corporation and township, the municipal corporation and township shall each receive one-half of the millage available for use within the portion of the territory annexed to the municipal corporation that remains part of the township.

R.C. 5705.315 (emphasis added).

Pursuant to this provision, with respect to any annexation granted on or after October 26, 2001, during any tax year within which territory annexed to a municipality is part of a township, both the municipality and township retain the minimum levies calculated pursuant to R.C. 5705.31, except in the territory in which the subdivisions overlap. In that territory, the minimum levies are reduced as prescribed, in order to come within the 10-mill limitation. The municipality and

township may enter into an agreement regarding their respective minimums within the 10-mill limitation. If there is no agreement, the municipality and township "shall each receive one-half of the millage available for use within the portion of the territory annexed to the municipal corporation that remains part of the township." R.C. 5705.315.[16]

With respect to annexations granted before October 26, 2001, the provisions of R.C. 5705.315 are not available. However, the provisions of R.C. 5705.311 are available, authorizing the imposition of a different minimum municipal levy when annexed territory is part of a different school district, but they apply only to the municipality's inside millage and not to the township's inside millage. *See* note 15, *supra.* Hence, a municipality in which territory annexed prior to October 26, 2001, is located within a township may be unable to levy the full 10 mills of inside millage in areas outside the annexed territory, if the conditions in R.C. 5705.311 are not satisfied.[17]

It is apparent that determining the allocation of inside millage may be a very complicated process. *See, e.g.,* 2005 Op. Att'y Gen. No. 2005-002; 1979 Op. Att'y Gen. No. 79-063. For example, if a municipality contains territory annexed prior to October 26, 2001, and also territory annexed subsequent to October 26, 2001, it is necessary first to determine the inside millage for the territory to which R.C. 5705.315 does not apply, which may require reductions in the minimum levies under R.C. 5705.31 so that the full 10 mills is not levied in some areas. With those levies so determined, R.C. 5705.315 may be applied to the more recent annexations (subsequent to October 26, 2001) to vary the minimum municipal and township lev-

[16] It has been suggested that R.C. 5705.315 might run afoul of the constitutional requirement that taxes be imposed uniformly. *See* Ohio Legislative Serv. Comm'n, Final Bill Analysis, Am. Sub. S.B. 5, 124th Gen. A., at n.16 ("[it] is possible this division of inside millage could be found unconstitutional since it appears to result in nonuniform tax rates"). For purposes of this opinion, we presume the constitutionality of provisions enacted by the General Assembly. *See, e.g., State ex rel. Swetland v. Kinney,* 69 Ohio St. 2d 567, 574, 433 N.E.2d 217 (1982) ("courts must afford legislation a very strong presumption in favor of constitutionality").

[17] Various other statutory provisions may also affect the allocation of inside millage. *See, e.g.,* R.C. 5705.312 (conditions under which minimum levy of municipality may be increased to pay debt service); *see also* 2005 Op. Att'y Gen. No. 2005-002 (board of education of school district may change its levy within the 10-mill limitation in a manner that will result in an increase in the amount of real property taxes levied by the board). A change in the minimum levy for one taxing unit may have serious consequences for other taxing units. *See, e.g.,* R.C. 118.03(A)(3) (a fiscal emergency condition of a municipal corporation, county, or township includes "[a]n increase, by action of the county budget commission pursuant to division (D) of section 5705.31 of the Revised Code, in the minimum levy of the municipal corporation, county, or township for the current or next fiscal year which results in a reduction in the minimum levies for one or more other subdivisions or taxing districts").

ies in the territory then annexed. It is necessary also to consider and apply all the factors set forth in R.C. 5705.31 and in any other relevant statutes. Hence, there is no simple answer to your question. The taxing authorities must examine with care the various annexations made to a particular municipality and the various taxing units within which each parcel is located and, on the basis of relevant facts, apply the provisions of R.C. 5705.31, R.C. 5705.315, and other relevant statutes, as well as any annexation agreements that may apply. *See, e.g., Braceville Township v. Trumbull County Budget Comm'n. See generally State ex rel. Poe v. Raine*, 47 Ohio St. 447, 463, 25 N.E. 54 (1890) (''[t]hat the performance of these duties may present difficulties requiring the exercise of a sound judgment, coupled with an extensive knowledge of the law is no doubt true, but constitutes no valid ground for an omission to perform them'').

We conclude, accordingly, that, if township territory has been annexed into a municipal corporation and township boundaries have not been conformed to those of the municipality, millage within the 10-mill limitation must be allocated in accordance with the provisions of R.C. 5705.31, R.C. 5705.315, other relevant statutes, and any applicable annexation agreements that may exist.

Question 3: We have had school districts petition the Summit County Budget Commission and be granted free inside millage. If the inside millage were granted back to the original taxing authority, what would be the status of that free millage that might no longer be available to them? Would we then be required to levy non-uniform tax rates as is only allowed in cases of annexation or would we be required to reverse the action of the Budget Commission to take back the inside millage from the school district?

Your third question concerns the inside millage granted to school districts. You speak of school districts that have been granted free inside millage and ask about reversing the action of the county budget commission to take back inside millage from the school districts. We understand free millage granted to a school district to be inside millage that is not required by law to be allocated to the school district and that is ''free'' for allocation to the school district because it has not been allocated to another taxing unit or otherwise restricted. *See generally Bd. of Educ. of Strongsville City Sch. Dist. v. Lorain County Budget Comm'n*; *Braceville Township v. Trumbull County Budget Comm'n*; R.C. 5705.313 (board of county commissioners may reduce inside millage when county sales tax is levied or increased, but unlevied millage cannot be allocated to any other overlapping taxing unit).

For purposes of this opinion, as discussed above, we are considering actions that public officials take currently or may take in the future. We are not considering the propriety of particular actions taken in the past, and we are not proposing to rectify any errors that may have been made in the past.

As discussed above, R.C. 5705.31(D) establishes minimum levies for school districts and other subdivisions or taxing units. *See* 2005 Op. Att'y Gen. No. 2005-002. The procedure for allocating inside millage is complex and requires the consideration of various factors, as provided by statute. *See, e.g.*, R.C. 5705.31; R.C. 5705.311; R.C. 5705.312; R.C. 5705.313; R.C. 5705.314; R.C. 5705.315.

Pursuant to R.C. 5705.31, the county budget commission allocates inside millage each year. It is possible that millage not allocated to another taxing unit may be free millage, available to a school district in a given year. *See generally Bd. of Educ. of Strongsville City Sch. Dist. v. Lorain County Budget Comm'n*; *Braceville Township v. Trumbull County Budget Comm'n*. There is, however, no guarantee that the same amount of free millage will be available the following year or, if it is, that the county budget commission will allocate it to the school district. *See, e.g.*, 1979 Op. Att'y Gen. No. 79-063. Further, as discussed above, tax rates must be uniform within each taxing unit unless statutory provisions permit non-uniform tax rates. *See, e.g.*, R.C. 5705.311; R.C. 5705.315.

Thus, inside millage is allocated on an annual basis. The county budget commission has a duty each year to examine the relevant statutes and facts and allocate the millage in accordance with its best judgment as to the manner in which it may comply with the law then in effect. It may modify prior actions only as permitted by statute or in compliance with proper administrative or judicial proceedings.

We conclude, accordingly, that millage within the 10-mill limitation is allocated on an annual basis in accordance with R.C. 5705.31(D), and the county budget commission (or corresponding entity in a charter county such as Summit County) is empowered to determine each year how to allocate any inside millage that is not required by law to be allocated to a particular taxing unit.

Question 4: If the boundaries are not conformed prior to the submission of the Abstract, requiring us to create a new taxing district, and the taxing authority subsequently conforms its boundaries prior to the end of the year, must the taxpayers in that new district be taxed by both entities for one year until the property can be again rerouted via the next Abstract? When does this become too late to change? Would it be at the submission of the Abstract in October or the submission of the tax rates in November or the calculation of reduction factors in December?

Your fourth question asks about a situation in which territory annexed to a municipality remains within a township when the abstract of real property values is prepared, but is removed from the township prior to the end of the calendar year. You ask whether the residents must pay township taxes for that year, and which date is determinative for levying township taxes. Your basic concern is at what point in a given tax year it becomes too late for a municipality to conform the boundaries of annexed property pursuant to R.C. 503.07, so that no township taxes are levied upon that property.

The general rule for determining whether territory is part of a taxing unit for purposes of taxation in a particular tax year was set forth in 1995 Op. Att'y Gen. No. 95-010, in a situation involving the addition of territory to a joint ambulance district, as follows:

> Thus, whether a parcel of property is subject to a tax levied by a subdivision or taxing unit depends upon whether the property is part of

> the subdivision or taxing unit on the date the taxing authority certifies the tax [to the county auditor]. Only if a parcel is located within a subdivision or taxing unit on the date the tax is certified by that subdivision or taxing unit is the parcel subject to such levy.

1995 Op. Att'y Gen. No. 95-010 at 2-54. According to this rule, the territory that is subject to taxation by a taxing unit is the territory that is located in the taxing unit when taxes are certified to the county auditor to be placed upon the tax list and duplicate.

This rule is consistent with 1956 Op. Att'y Gen. No. 7420, p. 805, which is discussed at length in the 1995 opinion and states, in part:

> The significant and substantive step in the procedure required for the levy of taxes, and the final exercise of authority by the taxing authority, is *authorization by such taxing authority of the levy* previously approved by the Budget Commission by resolution or ordinance *and its certification to the auditor.* Section 5705.34, Revised Code. It is at this point that the taxing authority pursuant to statute and in due course of law imposes a tax upon all property within its territory; *any subsequent changes both as to territory or the tax authority itself cannot affect this levy*, and upon the extension of the levy upon the general tax list and duplicate, and its certification to the treasurer for collection, the taxes on real property for the current year have accrued. Hoglen v. Cohan, 30 Ohio St., 436; see generally Accrual of the General Property Tax in Ohio, by Lawrence E. Brohkahn, 15 Cin. L. Rev., 359.
>
> . . . *The county auditor, pursuant to Section 319.30, Revised Code, must extend upon the general tax list and duplicate those rates certified to him by the existing taxing authorities and such extension can be made only upon those lots or parcels within the various school districts as they were constituted at that time.* Upon certification of the duplicate to the county treasurer for collection pursuant to Section 319.28, Revised Code, the county auditor can make no fundamental or substantive change to the general tax list or duplicate. The authority of the county auditor to make any changes in the general tax list or duplicates is limited solely to clerical errors. Section 319.35, Revised Code.

1956 Op. Att'y Gen. No. 7420, p. 805 at 809 (emphasis added).

The 1956 opinion states expressly that, after the authorization of the levy of taxes pursuant to R.C. 5705.34, the county auditor is without authority "to make any change in said general tax list or duplicate to reflect such subsequent changes in the territory of the school districts or the creation of a new school district." 1956 Op. Att'y Gen. No. 7420, p. 805 at 806 (syllabus, paragraph 1); *accord* 1956 Op. Att'y Gen. No. 6307, p. 139 (syllabus) ("[w]here a transfer of territory to a school district has been completed . . . prior to the authorization, by 'ordinance or resolution' as provided in [R.C. 5705.34], of a real property tax levy within such district,

such levy at the rate so authorized should be applied to the entire district as thus enlarged for the current year''); 1928 Op. Att'y Gen. No. 2358, vol. III, p. 1745 (where territory is annexed before the municipality authorizes and certifies tax levies, the tax levies should be extended for collection on all the taxable property in the municipality, including that in the territory annexed); *see also Hoglen v. Cohan; City of Cincinnati v. Roettker*, 41 Ohio App. 269, 275, 180 N.E. 907 (Hamilton County 1931) (quoting Cooley on ''Taxation,'' volume 1 (4th Ed.), Section 96, in part, as follows: ''territory [added to a tax district] cannot be taxed for the current year *where the tax list is closed for such year*''); *State ex rel. Village of South Brooklyn v. Craig*, 11 Ohio Cir. Dec. 348 (Cuyahoga Cir. Ct. 1900) (where territory was annexed to a village before the village tax levy was certified to the county auditor, the county auditor had a duty to enter the municipal levy upon the annexed property).[18]

This general rule is consistent also with *State ex rel. Summit County Board of Education v. Medina County Board of Education*, 45 Ohio St. 2d 210, 343 N.E.2d 110 (1976) (syllabus, paragraph 1), in which the Ohio Supreme Court held: ''Pursuant to R.C. 5705.03, only the taxing authority of the taxing subdivision in which property is located on the date of the tax levy is authorized to levy real and personal property taxes thereon for the year.'' The *Summit County/Medina County* case treats the authorization of the tax and certification to the county auditor as part of the levying of the tax, thus indicating that the taxing unit boundaries in effect on the date of a tax levy are the boundaries that apply to the levying and collection of the tax. *State ex rel. Summit County Bd. of Educ. v. Medina County Bd. of Educ.*, 45 Ohio St. 2d at 213.

As stated in 1956 Op. Att'y Gen. No. 7420, the county auditor must extend upon the tax list and duplicate the rates certified by the existing taxing authorities, and that extension can be made only upon the lots or parcels within the taxing units as they were constituted when the tax levies were certified. 1956 Op. Att'y Gen. No. 7420, p. 805 at 809-10. Accordingly, the taxes are levied upon the territory that was included within the taxing unit when the taxes were certified to the county auditor.

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[18] A consistent but somewhat different analysis was expressed by another Attorney General, as follows:

> Under the provisions of Section 319.28, Revised Code, the county auditor is required to certify, and on the first day of October deliver, the tax duplicate to the county treasurer. The delivery of the duplicate to the treasurer corresponds to issuing an execution upon a judgment to the sheriff. *Thompson v. Kelly*, 2 Ohio St., 647. It follows, therefore, that the duplicate should be as accurate as possible when it is delivered to the treasurer. Obviously, if part of the territory of Saybrook Township was annexed to the city of Ashtabula effective September 7, then the duplicate on October 1, in order to be accurate, should show such territory as part of the city of Ashtabula.

1960 Op. Att'y Gen. No. 1901, p. 720 at 723.

We conclude, accordingly, that if the boundaries of annexed township territory are not conformed to those of the municipality before the county auditor submits the abstract of real property to the Tax Commissioner but are so conformed before the end of the year, the property in that territory is subject to a tax levied by the township only if the territory is part of the township when the township certifies the tax to the county auditor pursuant to R.C. 5705.34 for inclusion on the tax list and duplicate pursuant to R.C. 319.28. *See* 1995 Op. Att'y Gen. No. 95-010.

Question 5: If the boundaries were not conformed, would that render our treatment of this property on prior Abstracts invalid? If so, what effect would this have on prior reduction factors and resultant tax rates since we have obviously altered the carry-over value used in those calculations?

Your fifth question asks about a situation in which, following annexation, township boundaries were not conformed to those of the municipality, but taxes were calculated and levied as if the boundaries had been conformed. You ask whether the treatment of this property on prior abstracts is "invalid" and what effect this would have on prior reduction factors and resultant tax rates. *See Black's Law Dictionary* 829 (7th ed. 1999) (defining "invalid" to mean "[n]ot legally binding").

As discussed above, we are not able by means of this opinion to resolve questions of fact regarding the lawfulness of actions taken in the past or the rights or liabilities of particular individuals or governmental entities. A resolution of all the issues that may surround the taxation situation in your county thus exceeds the scope of this opinion. We are able, however, to discuss general principles of law that may be applicable to the question you have raised.

There is a presumption of validity of action taken by a public official in the course of the performance of the official's duties. *See Cincinnati Sch. Dist. Bd. of Educ. v. Hamilton County Bd. of Revision*, 87 Ohio St. 3d at 366 ("[i]t is presumed that the auditor does his or her job correctly"); *Zalud Oldsmobile Pontiac, Inc. v. Tracy*, 77 Ohio St. 3d 74, 80, 671 N.E.2d 32 (1996) ("[s]ince the [tax] commissioner has authority to issue this assessment and final determination . . . , we presume these orders are valid"); *Cedar Bay Constr., Inc. v. City of Fremont,* 50 Ohio St. 3d 19, 21, 552 N.E.2d 202 (1990) (public officers are presumed to have acted regularly and in a lawful manner); *State ex rel. Maxwell v. Schneider*, 103 Ohio St. 492, 498, 134 N.E.2d 443 (1921) ("[t]he action of a public officer, or of a board, within the limits of the jurisdiction conferred by law, is not only presumed to be valid but it is also presumed to be in good faith and in the exercise of sound judgment"); *Governing Bd. of Gallia County Educ. Service Ctr. v. Gallia County Budget Comm'n*, Nos. 96-T-1200 and 97-T-248, 1998 Ohio Tax LEXIS 843, *17 (BTA June 19, 1998) ("[i]n reviewing the actions of both the Budget Commission and the Auditor, we acknowledge that the acts of public officials are presumed to have been carried out in good faith, with appropriate forethought, and in accordance with the applicable law").

In general, action taken by public officials is presumed to have legal effect,

even though some errors may occur. *See State ex rel. Hasbrook v. Lewis*, 64 Ohio St. 216, 234, 60 N.E. 198 (1901) (where boards of equalization were legally constituted and exercised their jurisdiction to act upon returns of the district assessors placed before them by the auditor, "while they may have erred in judgment and proceeding, such error would not render their work void, but only irregular"); *see also Elkem Metals Co., Ltd. P'ship v. Washington County Bd. of Revision*, 81 Ohio St. 3d 683, 685, 693 N.E.2d 276 (1998) ("[a] board of revision's decision as to whether a complaint meets the jurisdictional requirements, while voidable, is not void"); *Cincinnati Sch. Dist. Bd. of Educ. v. Hamilton County Bd. of Revision*, 87 Ohio St. 3d at 368 (there is no statutory or inherent power for a board of revision to vacate a decision, even a void decision, after the appeal time has expired).

The fact that official actions may have legal effect even though they are not flawless is evidenced by the fact that various statutory provisions authorize the correction of errors made in the taxation process. *See, e.g.*, R.C. 319.35 (duty of county auditor to correct clerical errors in tax lists and duplicates); R.C. 319.36 (taxes erroneously charged or collected); R.C. 319.40 (providing a procedure for charging county, township, municipal, or school district taxes that were omitted for up to five preceding years);[19] R.C. 5713.19 (duty of county auditor to correct clerical errors in county list of real property); R.C. 5713.20 (procedure for adding omitted property to the tax list and charging taxes for up to five previous years); R.C. 5713.21 (correction of mistakes in valuing property); R.C. 5715.14 (correction of tax list and duplicate pursuant to action of the county board of revision); R.C. 5715.17 and R.C. 5715.19(A)(1) (appeal to county board of revision of various matters relating to the assessment of real property).

Actions taken by public officials may be changed only as permitted by law. *See Cincinnati Sch. Dist. Bd. of Educ. v. Hamilton County Bd. of Revision*, 87 Ohio St. 3d at 367-69. Accordingly, if township boundaries were not properly reflected on the abstract or the tax list and duplicate, the remedy for the errors must be provided in accordance with the procedures established by law. *See, e.g.*, R.C. 319.35; R.C. 5713.19; R.C. 5713.21; R.C. 5715.17; R.C. 5715.19; R.C. 5715.251; R.C. 5715.26; *State ex rel. Rolling Hills Local Sch. Dist. Bd. of Educ. v. Brown*, 63 Ohio St. 3d at 521 (pursuant to R.C. 5715.11 and R.C. 5715.19(A), "a school board may appeal the incorrect recording of a property on the tax list [specifically, the recording of property in the wrong school district] since the recording is a part of the assessment, and the board of revision has the power to correct this"); *McCormack*

[19] R.C. 319.40, provides expressly that, "[w]hen the county auditor is satisfied that lots or lands on the tax list or duplicate have not been charged with either the county, township, municipal corporation, or school district tax, he shall charge against it all such omitted tax for the preceding years, not exceeding five years, unless in the meantime such lands or lots have changed ownership, in which case only the taxes chargeable since the last change of ownership shall be so charged." *See also* R.C. 5713.20; R.C. 5715.15. Thus, the auditor's authority to charge for township taxes omitted in prior years is limited to the preceding five years, and further limited if a change of ownership has occurred.

v. Limbach, 1988 Ohio App. LEXIS 348, at *2 (upholding remedy ordered by Tax Commissioner and citing the need to accord administrative interpretations substantial weight).

Your question concerns possible changes in prior reduction factors and resultant tax rates, based on changed carryover values. As discussed above, the determination of the reduction factor is made by the Tax Commissioner and cannot be changed by the action of county officials, absent direction by the Tax Commissioner or through proper administrative or judicial proceedings. Ohio's statutes anticipate, in general, that a reduction factor is fixed once for each year and is not changed even if corrections are made in property values for that year, except pursuant to administrative or judicial proceedings. Hence, unless administrative or judicial action is taken to change prior reduction factors, they remain in effect and charges made under R.C. 319.40 for omitted taxes are based on the reduction factors previously adopted for the appropriate years.

We conclude, accordingly, that if township territory has been annexed into a municipal corporation and township boundaries have not been conformed to those of the municipality, but taxes are calculated and levied as if the boundaries had been conformed, the actions of public officials taken to calculate and levy the taxes are presumed to be valid and of legal effect, and may be modified or corrected only in accordance with provisions of statute or through proper administrative or judicial procedures.

Question 6: If the boundaries are not conformed prior to the 2005 general election, and residents vote on township and municipal issues, and the boundaries are conformed after the election, are the taxpayers obligated to pay property taxes for both the township and municipality since they were voted on?

Your sixth question concerns a situation in which territory annexed to a municipality is part of a township during the 2005 general elections and residents of that territory vote on township and municipal issues. Following the election, the township boundaries are conformed to those of the municipality. The question is whether the taxpayers are obligated "to pay property taxes for both the township and the municipality since they were voted on."

As discussed in connection with your fourth question, territory located in a township is subject to a tax levied by a township if the territory is part of the township when the township certifies the tax to the county auditor pursuant to R.C. 5705.34 for inclusion in the tax list and duplicate pursuant to R.C. 319.28. Accordingly, if township boundaries are not conformed to those of a municipality at the time of the election on a tax levy but are subsequently conformed, the taxpayers will be obligated to pay township taxes if the territory is located within the township when the township certifies the tax to the county auditor pursuant to R.C. 5705.34 for inclusion on the tax list and duplicate pursuant to R.C. 319.28.

Ohio's Constitution and statutes require voter approval of levies outside the 10-mill limitation, and also require real property taxes to be imposed in a uniform

manner within the taxing unit. *See* Ohio Const. art. XII, § 2; R.C. 5705.02; R.C. 5705.07; *State ex rel. Park Inv. Co. v. Bd. of Tax Appeals*, 26 Ohio St. 2d 161, 164-66, 270 N.E.2d 342 (1971). To achieve uniformity when the boundaries of the taxing unit have changed, the entire territory within the changed boundaries is generally made subject to the tax, and any area excluded from the taxing unit is generally excused from the tax. *See* R.C. 5705.26 (authorizing the taxing authority of a subdivision whose voters have approved a tax levy to levy that tax "within such subdivision"); 1982 Op. Att'y Gen. No. 82-063 at 2-178 ("once the voters of a joint fire district have voted in favor of the levy of a tax outside the ten-mill limitation, the board of trustees is authorized to levy the voted tax throughout the district regardless of whether any particular area in the district was part thereof when the question was submitted for voter approval"); *accord* 1989 Op. Att'y Gen. No. 89-021 (overruled in part on other grounds by 2004 Op. Att'y Gen. No. 2004-032); *cf.* R.C. 505.37(C) (township fire district tax must be approved by electors of territory proposed for addition to the district). *See generally Kellenberger v. Bd. of Educ.*, 173 Ohio St. 201, 180 N.E.2d 834 (1962); *Gigandet v. Brewer*, 134 Ohio St. 86, 92-93, 15 N.E.2d 964 (1938) ("[i]n the absence of specific constitutional inhibitions, the principle applies that where the boundaries of a school district or other political subdivisions are legally extended, the added territory becomes subject to the same obligation as the other territory in the district or subdivision"); 1995 Op. Att'y Gen. No. 95-010 (syllabus, paragraph 2) ("[i]f a subdivision is part of a joint ambulance district at the time the district certifies its tax rate for that year to the county auditor in accordance with R.C. 5705.34, the property in that subdivision is subject to a tax levied under R.C. 5705.19 for that tax year by the joint ambulance district, even though that subdivision was not part of the district at the time the voters of the district approved the tax levy").

There are, however, certain circumstances in which territory removed from a township may remain subject to taxation by the township. For example, R.C. 503.17 provides that, "[w]hen a township is altered, diminished, or changed in any way by the formation of new townships, additions to other townships, or otherwise, such original township and all portions thereof shall remain liable to the same extent on contracts, engagements, or liabilities contracted by such township prior to the change as if no such alteration, diminution, or change had taken place." [20] In the case of a division or change of a township that has retained its original name, if the board of township trustees levies "a tax for the payment of any legal or just claims against such township contracted prior to the change," R.C. 503.18, or interest on those claims, the board of township trustees may, through specified procedures, levy the tax "on the taxable property within the limits of such township as it was bounded before the change," R.C. 503.19. *See also* R.C. 503.20-.21. Thus, residents of township territory that is annexed to a municipality and removed from the town-

[20] Various statutes provide for the allocation of funds, credits, properties, or indebtedness upon the change of boundaries of a township. *See, e.g.*, R.C. 503.02; R.C. 503.10; R.C. 503.11; R.C. 709.12; 2003 Op. Att'y Gen. No. 2003-023; *see also* R.C. 709.19-.191 (payments to compensate township for lost tax revenues following annexation); R.C. 709.192 (annexation agreements).

ship may, in some circumstances, be required to pay real property taxes levied by the township to pay for contracts, engagements, or liabilities contracted by the township before the territory was removed from the township. *See* 1963 Op. Att'y Gen. No. 748, p. 670.[21]

Various other statutes provide for situations in which real property taxes levied in a single taxing unit may not be uniform. *See, e.g.,* R.C. 5705.311; R.C. 5705.315. Absent a constitutional or statutory exception, however, real property taxes must be levied at the same rate throughout a taxing unit.

In the situation described in your sixth question, if the boundaries of annexed township territory are not conformed to those of the municipality at the time of an election, residents of the overlapping territory may vote on both township and municipal issues. Tax levies that are approved by township voters are levied throughout the township according to the township boundaries in existence when the township certifies the tax to the county auditor pursuant to R.C. 5705.34 for inclusion on the tax list and duplicate pursuant to R.C. 319.28, unless a specific statute provides to the contrary.

Conclusions

For the reasons discussed above, it is my opinion, and you are advised, as follows:

1. When territory annexed to a municipality remains part of a township, the territory should be included on the abstract of real property and on the tax list and duplicate in the manner in which other property is included, with information reflecting that the property is located in both the township and the municipality, as well as in other appropriate taxing units, in accordance with R.C. 319.28, R.C. 5715.16, R.C. 5715.23, and other relevant provisions. The determination of the tax reduction factor is made by the Tax Commissioner, in accordance with R.C. 319.301, 16 Ohio Admin. Code 5703-25-48, and other relevant provisions.
2. If township territory has been annexed into a municipal corporation and township boundaries have not been conformed to those of the

[21] 1963 Op. Att'y Gen. No. 478, p. 670 (syllabus, paragraph 1) states:

> 1. Where the electors of a township which included a municipal corporation have authorized a special tax levy outside the ten-mill limitation for specific township purposes and after such favorable vote by the electors a new township has been created to include only the limits of the municipal corporation as provided by Section 503.07, Revised Code, the board of trustees of the township which has retained its original name may, pursuant to Sections 503.18 and 503.19, Revised Code, levy such special tax on all of the property formerly within the township, including the municipal corporation, for the payment of contracts, engagements, or liabilities contracted prior to the change in the township boundaries.

municipality, millage within the 10-mill limitation must be allocated in accordance with the provisions of R.C. 5705.31, R.C. 5705.315, other relevant statutes, and any applicable annexation agreements that may exist.

3. Millage within the 10-mill limitation is allocated on an annual basis in accordance with R.C. 5705.31(D), and the county budget commission (or corresponding entity in a charter county such as Summit County) is empowered to determine each year how to allocate any inside millage that is not required by law to be allocated to a particular taxing unit.

4. If the boundaries of annexed township territory are not conformed to those of the municipality before the county auditor submits the abstract of real property to the Tax Commissioner but are so conformed before the end of the year, the property in that territory is subject to a tax levied by the township only if the territory is part of the township when the township certifies the tax to the county auditor pursuant to R.C. 5705.34 for inclusion on the tax list and duplicate pursuant to R.C. 319.28. (1995 Op. Att'y Gen. No. 95-010, approved and followed.)

5. If township territory has been annexed into a municipal corporation and township boundaries have not been conformed to those of the municipality, but taxes are calculated and levied as if the boundaries had been conformed, the actions of public officials taken to calculate and levy the taxes are presumed to be valid and of legal effect, and may be modified or corrected only in accordance with provisions of statute or through proper administrative or judicial procedures.

6. If the boundaries of annexed township territory are not conformed to those of the municipality at the time of an election, residents of the overlapping territory may vote on both township and municipal issues. Tax levies that are approved by township voters are levied throughout the township according to the township boundaries in existence when the township certifies the tax to the county auditor pursuant to R.C. 5705.34 for inclusion on the tax list and duplicate pursuant to R.C. 319.28, unless a specific statute provides to the contrary.