OPINION NO. 2007-021

Syllabus:

1. Under R.C. 323.151(A), a person who owns a life estate in a homestead is an owner of a homestead for purposes of R.C. 323.152.
2. The county auditor is not required to notify anyone other than a life estate owner in a homestead who applies for a reduction in real property taxes under R.C. 323.152(A) when the auditor denies the life estate owner's application for the reduction or determines that the life estate owner does not qualify for the reduction.

To: C. David Warren, Athens County Prosecuting Attorney, Athens, Ohio
By: Marc Dann, Attorney General, July 18, 2007

You have requested an opinion concerning a reduction in real property taxes under R.C. 323.152 for a person who owns a life estate[1] in a homestead. Specifically, you ask:

1. Is a person who owns a life estate in a homestead the owner of a homestead for purposes of R.C. 323.152, and, if so, is the income of anyone other than a life estate owner who applies for a reduction in real property taxes under R.C. 323.152(A) and the life estate owner's spouse used when determining total income?
2. Is the county auditor required to notify anyone other than the owner

[1] A life estate is "[a]n estate held only for the duration of a specified person's life, usu. the possessor's." *Black's Law Dictionary* 588 (8th ed. 2004); *accord* Roger A. Cunningham et al., *The Law of Property,* 62-65 (2nd ed. 1993).

> of a life estate in a homestead when the auditor denies the life estate owner's application for a reduction in real property taxes under R.C. 323.152(A) or determines that the life estate owner does not qualify for the reduction?

Based on the following analyses, we conclude that, under R.C. 323.151(A), a person who owns a life estate in a homestead is an owner of a homestead for purposes of R.C. 323.152. We conclude, further, that the county auditor is not required to notify anyone other than a life estate owner in a homestead who applies for a reduction in real property taxes under R.C. 323.152(A) when the auditor denies the life estate owner's application for the reduction or determines that the life estate owner does not qualify for the reduction.

Reduction of Real Property Taxes under R.C. 323.152

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

> In addition to the reduction in taxes required under [R.C. 319.302], taxes shall be reduced as provided in divisions (A) and (B) of this section.
>
> (A)(1)Division (A) of this section applies to any of the following:
>
> (a) A person who is permanently and totally disabled;
>
> (b) A person who is sixty-five years of age or older;
>
> (c) A person who is the surviving spouse of a deceased person who was permanently and totally disabled or sixty-five years of age or older and who applied and qualified for a reduction in taxes under this division in the year of death, provided the surviving spouse is at least fifty-nine years but not sixty-five or more years of age on the date the deceased spouse dies.
>
> (2) Real property taxes on a homestead owned and occupied, or a homestead in a housing cooperative occupied, by a person to whom division (A) of this section applies shall be reduced for each year for which the owner obtains a certificate of reduction from the county auditor under [R.C. 323.154] or for which the occupant obtains a certificate of reduction in accordance with [R.C. 323.159] or for which the occupant obtains a certificate of reduction in accordance with [R.C. 323.159]....
>
> (B) To provide a partial exemption, real property taxes on any homestead, and manufactured home taxes on any manufactured or mobile home on which a manufactured home tax is assessed pursuant to [R.C. 4503.06(D)(2)] shall be reduced for each year for which the owner obtains a certificate of reduction from the county auditor under [R.C. 323.154].

See Ohio Const. art. XII, § 2 (laws may be passed to reduce real property taxes).

To obtain a reduction in real property taxes under R.C. 323.152, the owner of a homestead must file an application with the county auditor of the county in which the owner's homestead is located. R.C. 323.153(A). The application must be in the form of a signed statement and be filed after the first Monday in January and not later than the first Monday in June in the year preceding the year for which the reduction is sought. *Id. But see generally* note three, *infra* (extending the filing deadline for tax year 2007 to October 1, 2007). The statement in the application must consist of the following:

> The statement shall be on a form, devised and supplied by the tax commissioner, which shall require no more information than is necessary to establish the applicant's eligibility for the reduction in taxes and the amount of the reduction, and, for a certificate of reduction issued under [R.C. 323.154], shall include an affirmation by the applicant that ownership of the homestead was not acquired from a person, other than the applicant's spouse, related to the owner by consanguinity or affinity for the purpose of qualifying for the real property or manufactured home tax reduction provided for in division (A) or (B) of [R.C. 323.152]. The form shall contain a statement that conviction of willfully falsifying information to obtain a reduction in taxes or failing to comply with division (C) of this section results in the revocation of the right to the reduction for a period of three years.

R.C. 323.153(A).

If the owner of a homestead complies with R.C. 323.153 and the county auditor finds that the owner's homestead is entitled to a reduction in real property taxes for that year under R.C. 323.152, the auditor shall issue a certificate of reduction in taxes. R.C. 323.154. Upon issuing such a certificate, "the county auditor shall forward one copy and the original to the county treasurer and retain one copy." *Id.* The county treasurer shall retain the original certificate of reduction in real property taxes issued under R.C. 323.154 and forward the copy to the homestead owner. R.C. 323.155.

Homestead Owner for Purposes of R.C. 323.152

Let us now consider your first question, which asks whether a person who owns a life estate in a homestead is an owner of a homestead for purposes of R.C. 323.152. As used in R.C. 323.151-.159, a "homestead" is defined as either of the following:

(1) A dwelling, including a unit in a multiple-unit dwelling and a manufactured home or mobile home taxed as real property pursuant to [R.C. 4503.06(B)], owned and occupied as a home by an individual whose domicile is in this state and who has not acquired ownership from a person, other than the individual's spouse, related by consanguinity or affinity for the purpose of qualifying for the real property tax reduction provided in [R.C. 323.152].

(2) A unit in a housing cooperative that is occupied as a home, but not owned, by an individual whose domicile is in this state.[2] (Footnote added.)

R.C. 323.151(A).

R.C. 323.151(A) states further that the owner of a homestead includes, *inter alia*, "a life tenant." Because the term "life tenant" is not defined for purposes of R.C. 323.151(A), the term is accorded its common, ordinary meaning. R.C. 1.42.

Black's Law Dictionary 946 (8th ed. 2004) defines a life tenant as "[a] person who, until death, is beneficially entitled to property; *the holder of a life estate*." (Emphasis added.) *See* Roger A. Cunningham et al., *The Law of Property* 63 (2nd ed. 1993) (the owner of a present life estate is referred to as the life tenant). Thus, in common parlance, a life tenant is a person who owns a life estate in property. Therefore, under R.C. 323.151(A), a person who owns a life estate in a homestead is an owner of a homestead for purposes of R.C. 323.152. *See generally Sears v. Weimer,* 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five) ("[w]here the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted").

Determining Total Income for Purposes of R.C. 323.152(A)

The second portion of your first question asks whether the income of anyone other than a life estate owner who applies for a reduction in real property taxes under R.C. 323.152(A) and the life estate owner's spouse is used when determining total income. Prior to the enactment of Am. Sub. H.B. 119, 127th Gen. A. (2007) (eff. June 30, 2007, with certain sections effective on other dates) former R.C. 323.152(A) authorized a county auditor to reduce real property taxes on a homestead as follows:

> The reduction shall equal the amount obtained by multiplying the tax rate for the tax year for which the certificate is issued by the reduction in taxable value shown in the following schedule:

Total Income	*Reduce Taxable Value by the Lesser of:*
$11,900 or less	*$5,000 or seventy-five per cent*

[2] Your questions concern a person who owns a life estate in a homestead. Based on this fact, it is assumed, for the purpose of this opinion, that the person is not living in "[a] unit in a housing cooperative that is occupied as a home, *but not owned*, by an individual whose domicile is in this state." R.C. 323.151(A)(2) (emphasis added).

More than $11,900 but not more than $17,500	*$3,000 or sixty per cent*
More than $17,500 but not more than $23,000	*$1,000 or twenty-five per cent*
More than $23,000	*-0-*

(3) Each calendar year, the tax commissioner shall adjust the foregoing schedule by completing the following calculations in September of each year:

(a) Determine the percentage increase in the gross domestic product deflator determined by the bureau of economic analysis of the United States department of commerce from the first day of January of the preceding calendar year to the last day of December of the preceding calendar year;

(b) Multiply that percentage increase by each of the total income amounts, and by each dollar amount by which taxable value is reduced, for the current tax year;

(c) Add the resulting product to each of the total income amounts, and to each of the dollar amounts by which taxable value is reduced, for the current tax year;

(d)(i) Except as provided in division (A)(3)(d)(ii) of this section, round the resulting sum to the nearest multiple of one hundred dollars;

(ii) If rounding the resulting sum to the nearest multiple of one hundred dollars under division (A)(3)(d)(i) of this section does not increase the dollar amounts by which taxable value is reduced, the resulting sum instead shall be rounded to the nearest multiple of ten dollars.

The commissioner shall certify the amounts resulting from the adjustment to each county auditor not later than the first day of December each year. The certified amounts apply to the following tax year. The commissioner shall not make the adjustment in any calendar year in which the amounts resulting from the adjustment would be less than the total income amounts, or less than the dollar amounts by which taxable value is reduced, for the current tax year. (Emphasis added.)

Thus, under former R.C. 323.152(A), the amount of reduction of taxable value on a homestead that could be approved by the county auditor was contingent upon the *total income* of the owner of the homestead and the owner's spouse.

Am. Sub. H.B. 119, however, amended R.C. 323.152(A) as follows:

> Real property taxes on a homestead owned and occupied, or a homestead in a housing cooperative occupied, by a person to whom division (A) of this section applies shall be reduced for each year for which

the owner obtains a certificate of reduction from the county auditor under [R.C. 323.154] or for which the occupant obtains a certificate of reduction in accordance with [R.C. 323.159]. The reduction shall equal the greater of the reduction granted for the tax year preceding the first tax year to which this section applies pursuant to Section 803.06 of Am. Sub. H.B. 119 of the 127th general assembly,[3] if the taxpayer received a reduction for that preceding tax year, or the product of the following:

(a) Twenty-five thousand dollars of the true value of the property in money;

(b) The assessment percentage established by the tax commissioner under [R.C. 5715.01(B)], not to exceed thirty-five per cent;

(c) The effective tax rate used to calculate the taxes charged against the property for the current year, where "effective tax rate" is defined as in [R.C. 323.08];

(d) The quantity equal to one minus the sum of the percentage reduc-

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[3] Uncodified section 803.06 of Am. Sub. H.B. 119, 127th Gen. A. (2007) (eff. June 30, 2007, with certain sections effective on other dates) states:

The amendments by this act to sections 323.151, 323.152, 323.153, and 323.154 of the Revised Code are first effective for tax year 2007, and the amendments to sections 4503.064, 4503.065, 4503.066, and 4503.067 of the Revised Code are first effective for tax year 2008, and the following provisions shall apply:

(A) Notwithstanding the filing deadlines set forth in sections 323.153 and 4503.066 of the Revised Code, original applications requesting reductions pursuant to division (A) of section 323.152 or section 4503.065 of the Revised Code may be filed not later than October 1, 2007. Notwithstanding the deadlines set forth in division (A) of section 323.153 of the Revised Code for homesteads in a housing cooperative, not later than August 1, 2007, the nonprofit corporation that owns and operates the housing cooperative shall obtain original applications from the county auditor and provide one to each occupant in the cooperative. Not later than September 1, 2007, any occupant who may be eligible for the reduction in taxes under division (A) of section 323.152 of the Revised Code shall submit the completed application to the corporation. Not later than October 1, 2007, the corporation shall file all completed applications and the information required by division (B) of section 323.159 of the Revised Code with the county auditor of the county in which the occupants' homesteads are located.

(B) Notwithstanding the deadlines set forth in sections 323.154 and 4503.067 of the Revised Code, if an application requesting the reduction under division (A) of section 323.152 of the Revised Code for tax year 2007 or under section 4503.065 of the Revised Code for tax year 2008 is not approved or the county auditor otherwise determines that the homestead does not quality for a reduction in taxes, the auditor's deadline to notify the applicant of the reasons for such denial shall be extended to November 1, 2007.

> tions in taxes received by the property for the current tax year under [R.C. 319.302] and [R.C. 323.152(B)]. (Footnote added.)

Am. Sub. H.B. 119 also deleted from R.C. 323.152 the language that referred to total income as an eligibility criterion used by the county auditor when determining the amount of a tax reduction under R.C. 323.152(A). R.C. 323.152, as amended by Am. Sub. H.B. 119, thus no longer makes the reduction in real property taxes under R.C. 323.152(A) contingent upon the total income of a life estate owner.[4] It is, therefore, unnecessary to answer whether the income of anyone other than a life estate owner who applies for a reduction in real property taxes under R.C. 323.152(A) and the life estate owner's spouse is used when determining total income.

Notification that an Application for a Reduction in Real Property Taxes under R.C. 323.152(A) Has Not Been Approved by the County Auditor

Your final question asks whether the county auditor is required to notify anyone other than the owner of a life estate in a homestead when the auditor denies the life estate owner's application for a reduction in real property taxes under R.C. 323.152(A) or determines that the life estate owner does not qualify for the reduction. R.C. 323.154 requires a county auditor to notify an applicant for a reduction in real property taxes under R.C. 323.152(A) when the auditor will not issue a certificate of reduction to the applicant:

> If an application, late application, or continuing application is not approved, or if the county auditor otherwise determines that a homestead or a manufactured or mobile home does not qualify for a reduction in taxes under division (A) or (B) of [R.C. 323.152], the auditor shall notify the applicant of the reasons for denial not later than the first Monday in October.

Because no other provision in the Revised Code directs a county auditor to notify a person other than an applicant for a reduction in real property taxes under R.C. 323.152(A) when the auditor denies the applicant's application for a reduction or determines that the applicant does not qualify for the reduction, the auditor is required to only notify the applicant.

As explained previously, the applicant for a reduction in real property taxes under R.C. 323.152(A) when a homestead is subject to a life estate is the person who owns the life estate and occupies the homestead as a home. R.C. 323.151(A); R.C. 323.153(A). Accordingly, the county auditor is not required to notify anyone other than a life estate owner in a homestead who applies for a reduction in real property taxes under R.C. 323.152(A) when the auditor denies the life estate owner's application for the reduction or determines that the life estate owner does not qualify for the reduction.

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[4] Pursuant to uncodified section 818.03 of Am. Sub. H.B. 119, these changes to the language of R.C. 323.152 "are not subject to the referendum and go into immediate effect when this act becomes law."

Conclusions

In sum, it is my opinion, and you are hereby advised as follows:

1. Under R.C. 323.151(A), a person who owns a life estate in a homestead is an owner of a homestead for purposes of R.C. 323.152.

2. The county auditor is not required to notify anyone other than a life estate owner in a homestead who applies for a reduction in real property taxes under R.C. 323.152(A) when the auditor denies the life estate owner's application for the reduction or determines that the life estate owner does not qualify for the reduction.