

OPINION NO. 73-027**Syllabus:**

1. When a taxpayer, who qualifies as of January 1st for a homestead exemption, files an application for the tax reduction, but sells the property later in the year, the real property taxes on that particular piece of property are reduced for that calendar year, and such reduction shall be recorded on the general tax list and duplicate pursuant to R.C. 323.154 and 323.155.

2. Where a qualifying taxpayer files an application for the homestead exemption and then dies, the real property taxes on the homestead are reduced for that calendar year, even though the surviving spouse is not 65 years of age.

To: Eugene R. Weir, Coshocton County Pros. Atty., Coshocton, Ohio
By: William J. Brown, Attorney General, March 21, 1973

I have before me your predecessor's request for my opinion on the following questions:

1. When an otherwise qualifying homestead owner files an application for a tax reduction under the "Homestead Act" and then sells the property during the remainder of the year, is he still eligible for the reduction; does he get only a partial reduction; or is he disqualified completely as to that property? (The custom in our county between the buyer and seller of real estate has been to pro-rate the real property taxes to date of transfer of the deed).

2. When an otherwise valid application has been filed by a homeowner who is over 65 and that owner then dies, leaving a surviving spouse who is not 65, is the survivor entitled to any reduction, or is there no reduction at all since the home is not "owned and occupied" by a person over 65?

Both questions involve essentially the same issue. That is, does a change in the status of the original applicant for a homestead exemption control the exemption for the particular calendar year.

The homestead exemption is provided for in R.C. 323.151 through R.C. 323.157. R.C. 323.152 states in pertinent part that:

The real property taxes on a homestead owned and occupied by a person sixty-five years of age or older shall be reduced for any calendar year for which the owner obtains a certificate of reduction from the county auditor under section 323.154 of the Revised Code. * * * (Emphasis added.)

R.C. 323.154 states:

Not later than the first Monday in December of each year, the county auditor shall issue a certificate of reduction in taxes in triplicate for each applicant who has complied with section 323.153 of the Revised Code and who the auditor finds is entitled to a reduction in real property taxes for that year under section 323.152 of the Revised Code. The certificate shall state the true value of the homestead on the first day of January of that year, its taxable value, the amount of the reduction in taxable value calculated under section 323.152 of the Revised Code, the tax rate that is applicable against such homestead

during that year, the total amount of reduction in taxes for that year, and such other information as the board of tax appeals requires. (Emphasis added.)

It should be noted that R.C. 323.152 states that the tax reduction shall be for the calendar year for which a certificate of reduction is issued. In addition, R.C. 323.154 requires that the certificate state the total amount of reduction in taxes for the year. This would preclude a partial reduction in taxes based on only a portion of the year. Therefore, an applicant is either qualified or unqualified for the total amount of the reduction in taxes for the year under R.C. 323.152.

In determining whether a certificate may be issued for an individual where qualifying status changes after the application has been filed, I believe it is necessary to first consider the nature of the exemption. Since its availability is based on the personal status of the applicant, it follows that concern should focus on the time when the taxes become a personal obligation of the taxpayer. While a personal lien is not created, the generally followed view is that a personal obligation, which may be satisfied through the state's lien against the land, arises when the taxes accrue. Creps v. Faird, 3 Ohio St. 277 (1854).

There is, however, a difference of opinion on the date to be used. One series of cases held that the proper date was October 1, by which date the county auditor was required to deliver to the county treasurer a true copy or duplicate of the books containing the tax list required to be made by him for the year. See In re Estate of Anna E. Farper, 26 Ohio N.P.(n.s.) 431 (1927), Estate of Mary O'Brien, 2 Ohio N.P.(n.s.) 421 (1904), In re Lones, 57 Bull. 122 (1911), and Hoglen v. Cohan, 30 Ohio St. 436 (1876). Another series of cases held that the accrual of the taxes related back to the time the state's lien attached, and that, therefore, the personal obligation of the taxpayer dated from the time when the state's lien against the land attached. See Shannon v. Dresbach, 30 Ohio N.P.(n.s.) 301 (1930), State v. Roose, 90 Ohio St. 345 (1914), Walsh-McGuire Co. v. Commissioner of Internal Revenue, 97 F.2d 983 (1938), and Loomis v. Von Phul, 2 Ohio N.P.(n.s.) 423 (1894). In this regard R.C. 5719.01 provides that:

The lien of the state for taxes levied for all purposes on the real and public utility tax list and duplicate for the year 1954 and each year thereafter shall attach to all real property subject to such taxes on the first day of January, annually, and continue until such taxes and any penalties, interest, or other charges accruing thereon are paid, but taxes, assessments, penalties, interest, or other charges may be apportioned in case of transfer of a part of any tract or lot of real estate, in which case the lien of such taxes, special assessments, penalties, interest, or other charges shall extend to the transferred part and the remaining part only to the extent of the amounts allocated to such respective parts. * * *

Since neither series of cases appears controlling, it is

necessary, in determining which date should be applied, to consider the fact that under R.C. 323.153 an application for a homestead exemption must be filed after the first Monday in January and not later than the first Monday in June. If the view is adopted that the taxpayer's status must be determined as of October 1, such a determination would follow by almost four months the deadline for filing an application for the exemption. No provision is made for the late filing of an application. Consequently, many otherwise eligible taxpayers would be precluded from enjoying the benefit of the homestead exemption because they had no opportunity to comply with the requirement of R.C. 323.153 that they file an application no later than the first Monday in June.

I must conclude, then, that the General Assembly, in providing for the homestead exemption has implicitly adopted the view that the accrual of the tax, and, therefore, the personal obligation of the taxpayer, relate back to January 1st when the state's lien attaches. The taxpayer's qualification for the exemption may, therefore, be determined as of this time, and later changes in his status do not affect his right to the exemption.

This view is bolstered by reference to R.C. 323.151 (F), which provides that:

"Sixty-five years of age or older" means a person who has attained age sixty-four prior to the first day of January of the year of application for reduction in real estate taxes.

Not only does this definition enable determination of a taxpayer's age qualification at the beginning of the year, it is also broad enough to include the taxpayer who might not survive the entire year and even one who might die prior to his 65th birthday.

In specific answer to your questions it is my opinion, and you are so advised, that:

1. When a taxpayer, who qualifies as of January 1st for a homestead exemption and files an application for the tax reduction, but sells the property later in the year, the real property taxes on that particular piece of property are reduced for that calendar year, and such reduction shall be recorded on the general tax list and duplicate pursuant to R.C. 323.154 and 323.155.

2. Where a qualifying taxpayer files an application for the homestead exemption and then dies, the real property taxes on the homestead are reduced for that calendar year, even though the surviving spouse is not 65 years of age.