

OPINION NO. 72-115

Syllabus:

Under Section 319.301, Revised Code, the county auditor is required to apply the 10 per cent tax rollback, and then to submit a tax duplicate and a certificate of reduction under the homestead exemption to the county treasurer, who then applies the homestead exemption pursuant to Section 323.151 et seq., Revised Code.

To: E. G. Peper, Henry County Pros. Atty., Napoleon, Ohio
By: William J. Brown, Attorney General, December 7, 1972

I have before me your request for my opinion, which reads as follows:

"Your opinion is respectfully requested in regard to the application of certain provisions of the 1971 House Bill 475 which became effective January 1, 1972.

"Section 319.301 provides for a ten per cent reduction in taxes for the year 1972 and each year thereafter. Section 323.151 et seq. provides for a Homestead Exemption and authorizes the County Auditor and County Treasurer to reduce real property taxes on the homestead owned and occupied by a qualifying individual.

"Upon examining these various provisions of the new tax law, I am unable to find any instruction as to the sequence in which these tax reductions are to be applied by the County Auditor and County Treasurer.

"The final amount of taxes collectible from a person who is eligible for both the ten per cent reduction and the Homestead Exemption will be different if the Homestead Exemption is applied prior to the ten per cent reduction as compared to the result obtained when the ten per cent reduction precedes the Homestead Exemption.

"Your opinion is therefore requested as to the sequence to be followed by the County Auditor and County Treasurer in applying the ten per cent reduction and the Homestead Exemption."

Both the 10 per cent "rollback" in the amount of taxes to be levied against real property, and the reduction of such taxes allowed to a person 65 years of age who owns or occupies a homestead, were enacted by the General Assembly as parts of Amended Substitute House Bill No. 475, which became effective on December 20, 1971. The 10 per cent "rollback" appears in Section 319.301, Revised Code, and the homestead exemption is contained in Sections 323.151 - 323.157, Revised Code. You ask the order in which these reductions are to be subtracted from the annual taxes levied against real property.

Calculations for the homestead exemption are set out in Section 323.152, Revised Code, which reads as follows:

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

<u>Total Income of All Persons Residing In the Homestead</u>	<u>Reduce Taxable Value By the Lesser of:</u>
\$2000 or less	\$5,000 or seventy per cent of the taxable value of the homestead
More than \$2,000 but not more than \$4,000	\$5,000 or sixty per cent of the taxable value of the homestead
<u>Total Income of All Persons Residing in the Homestead</u>	<u>Reduce Taxable Value By the Lesser of:</u>
More than \$4,000 but not more than \$6,000	\$3,000 or fifty per cent of the taxable value of the homestead
More than \$6,000 but not more than \$8,000	\$2,000 or forty per cent of the taxable value of the homestead

* * * * *

"The reduction in taxable value referred to in section 323.152 of the Revised Code is to be applied solely as a factor for the purpose of computing the reduction of taxes under that section and shall not affect the total value of property in any subdivision or taxing district as listed and assessed for taxation on the tax lists and duplicates, or any direct or indirect limitations on indebtedness of a subdivision or taxing district. * * *

* * * * *

Applications for homestead exemptions are to be made under Section 323.153, Revised Code, which provides in part:

"(A) To obtain a reduction in real property taxes under section 323.152 of the Revised Code for any calendar year, an applicant shall file an application with the county auditor of the county in which the applicant's homestead is located. * * *"

Section 323.154, Revised Code, reads in part as follows:

"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. The certificate for reduction in taxes shall be on a form approved by the board of tax appeals. Upon issuance of such certificate, the county auditor shall forward one copy and the original to the county treasurer and retain one copy. The county auditor shall also record the amount of reduction in taxes in the appropriate column on the general tax list of real and public utility property."

Section 323.155, Revised Code, reads in part as follows:

"Upon receipt of a copy of a certificate of reduction in taxes from the county auditor, the county treasurer shall deduct from the amount of real property taxes due on the homestead of the person to whom the certificate was issued an amount equal to the reduction in taxable value shown on the certificate times the tax rate in effect for the calendar year for which the certificate was issued. The treasurer shall record the amount of reduction in taxes in the appropriate column on the tax duplicate. The treasurer shall certify on the certificate the total amount of taxes due on the homestead, the amount of reduction of such taxes as a result of the homestead exemption, and the net amount of any taxes due. The treasurer shall retain the original of the certificate and forward to the recipient a copy of the certificate, with the tax bill submitted pursuant to section 323.13 of the Revised Code. Such tax bill shall indicate only the net amount of taxes due, if any, following the reduction in taxes resulting from the homestead exemption."

A reading of these Sections makes it clear that, while the county auditor is charged with calculating the amount of the reduction, the actual deduction is made by the county treasurer upon receipt of the certificate of the amount from the auditor. Implicit in this requirement, and also in the provision requiring the treasurer to record the reduction on the tax duplicate, is an understanding that it is not until the treasurer receives from the auditor the general tax duplicate, listing the amount of taxes due, that the reduction pursuant to the homestead exemption can actually be applied.

While the computation and application of the reduction pursuant to the homestead exemption is split into two separate steps, there is no such division in the case of the 10 per cent tax rollback authorized by Section 319.301, Revised Code. That Section provides that:

"In December, 1972, and each year thereafter,

each county auditor shall reduce the amount of taxes certified to be levied against all real property listed on the general tax list and duplicate of real and public utility property of each county for that calendar year by ten per cent of such amount. The amount of the taxes following such reduction shall be the real and public utility property taxes charged and payable against such real property for the succeeding calendar year.
* * *

It should be noted that in the case of the rollback, the 10 per cent reduction is applied by the county auditor. Thus, it seems clear that the auditor both computes and applies the 10 per cent reduction in determining the amount of taxes to be "charged and payable." Consequently, when the tax duplicate, indicating the amount due, is received by the treasurer and used by him in applying the reduction under the homestead exemption, the 10 per cent rollback must necessarily have already been deducted by the county auditor.

After receiving the tax duplicate and the certificate of reduction from the auditor, the treasurer subtracts the amount certified and sends to the taxpayer a copy of the certificate and a tax bill for "the net amount of taxes due." Section 323.155, Revised Code. Clearly, the above procedure results in the application of the 10 per cent rollback before the homestead exemption.

This construction of the statutes is bolstered by a consideration of Section 319.301 in conjunction with Section 323.156, Revised Code, which authorizes reimbursement from the State General Fund for the cost to the counties of the homestead exemption. In Section 323.156, the amount of the reduction pursuant to Section 323.155 (the homestead exemption) is referred to as part of the taxes that were "levied", as follows:

"On the second Monday in July of each year, the county treasurer shall total the amount of taxes levied in the preceding calendar year that were reduced pursuant to section 323.155 of the Revised Code, and certify that amount to the auditor of state."

Since the 10 per cent tax reduction under Section 319.301 is based on the amount of taxes "certified to be levied", that base would necessarily include the amount by which taxes are reduced pursuant to the homestead exemption. Therefore, under this line of reasoning, computation of the 10 per cent rollback should precede the computation of the homestead exemption.

An additional reason for this construction is found in the following language in Section 323.152:

"The reduction in taxable value referred to in section 323.152 of the Revised Code is to be applied solely as a factor for the purpose of computing the reduction of taxes under that section
* * *."

If the homestead exemption were applied prior to the 10 per cent tax rollback, the latter would be computed based on an amount of taxes which had been reduced by the application of the homestead exemption. Consequently, that exemption would be used for purposes of computing the tax rollback, in violation of the above quoted language of Section 323.152.

In specific answer to your question it is my opinion, and you are so advised, that, under Section 319.301, Revised Code, the county auditor is required to apply the 10 per cent tax rollback, and then to submit a tax duplicate and a certificate of reduction under the homestead exemption to the county treasurer, who then applies the homestead exemption pursuant to Section 323.151 et seq., Revised Code.