



AMENDMENT 79

AN ASSESSOR'S GUIDE 2006

**ASSESSMENT COORDINATION DEPARTMENT
STATE OF ARKANSAS**

AMENDMENT 79 AN ASSESSORS GUIDE 2006

HISTORY

Amendment 79 to the Constitution of the state of Arkansas was proposed by the Eighty-second Arkansas General Assembly of the State of Arkansas and adopted by the voters in the general election in November 2000 and took effect January 1, 2001.

PURPOSE OF THE GUIDE

The Assessor is frequently called upon to make decisions as to whether or not a particular taxpayer (or his property) is entitled to one or more of the relief benefits provided by the terms of Amendment 79. In some cases this can be a very difficult task. To assist you in your endeavor this guide attempts to break Amendment 79 down into its component parts and pull together in one location the pertinent statutes and rules that apply to each of those component parts. Also to assist you, this guide provides a list of Frequently Asked Questions and our best effort to apply the appropriate law or rule and the rationale for doing so.

These guidelines are meant only to assist the Assessor in meeting his/her responsibilities and in no way are intended to be all-inclusive. In addition, facts vary in significance with each case and there is always the human element to factor in. As a result, no one can predict with absolute accuracy how a court will rule in a particular matter.

The Assessor should work closely with the County Attorney as to all Amendment 79 issues. The County Attorney will be defending the Assessor if a taxpayer challenges the decision of the Assessor in court. The Assessment Coordination Department does not have the authority to serve in that capacity, therefore, these Guidelines must be treated as advisory only.

HOW TO USE THIS GUIDE

1. Immediately make several copies of the Guide as soon as you receive it and keep at least one copy in reserve.
2. Everyone in the office should read the guide from start to finish as soon as possible.
3. Keep a permanent copy of the guide in a location convenient and easily accessible to all the office staff.
4. In reading this guide keep in mind that we have taken some short cuts. For example, when used in this guide, the word:

- (a) "property" means real property;
- (b) "owner" means the owner of a parcel or parcels of real property;
- (c) "credit" means the \$300.00 homestead tax credit.

- 5. On the last page of this guide is a copy of **Form A-18** of the ACD Rules. The first part of this form is entitled "Homestead Credit Application/Sales Verification", and the second part is entitled "Tax Credit/Amendment 79 Benefit Registration". Use of this form is mandatory for record keeping purposes and should provide some help to you in your decision making on Amendment 79 issues. However, in close cases, the information provided by the taxpayer in the form will not be sufficient and you will find it necessary to question the taxpayer in depth and perhaps require additional documentation.

IN GENERAL

- 1. Remember, the burden is on the taxpayer to satisfactorily show that he or she is entitled to the benefit.
- 2. Attorney General opinions are helpful in determining whether a property is entitled to an Amendment 79 benefit, but these opinions are not law. A government official may have protection from an accusation of misfeasance or a charge of malfeasance if he can show he acted in reliance on an opinion of the Attorney General.
- 3. ACD policy is that where part of a property would otherwise qualify for an Amendment 79 benefit, you may split the property between the two parts and assess accordingly.

BENEFITS AS PROVIDED IN AMENDMENT 79

- 1. A tax credit of up to \$300.00 on real property that qualifies as the owners homestead used as his principal place of residence.
- 2. A 5% per year limit on the amount of increase in taxable assessed value in a homestead resulting from a reappraisal.
- 3. A 10% per year limit on the amount of increase in taxable assessed value in non-homestead real property.
- 4. Caps for 65 and older and disabled. A prevention of the increase in assessed value of a homestead used as the principal place of residence of an owner 65 years of age or older or an owner who is 100% disabled.

\$300.00 PROPERTY TAX CREDIT

Amendment 79

The amount of the credit shall not exceed the amount of tax owed as a result of a reappraisal.

The property must be the homestead and principal place of residence of the owner-applicant.

ACA 26-26-1122

“Homestead” means the dwelling of a person that is used as his or her principal place of residence with the contiguous land, excluding all land valued as agricultural land, pasture land, or timber land.

“Homestead” shall also include a dwelling owned by a revocable trust and used as a principal place of residence of a person who formed the trust.

“Property owner” means a person who is the owner of record of real property or the mortgagee of the real property, a buyer under a recorded contract to purchase or, a person holding a recorded life estate.

“Property owner” shall include the previous record owner of tax-delinquent real property that has vested in the State under ACA 26-37-101(c) if the previous owner continues to occupy the residence subject to his or her right of redemption.

ACA 26-26-1118

If the property qualifies for the credit at any time during the assessment year, it is deemed to be qualified for the entire year regardless of a change in or use;

Prior to issuing tax bills the assessor shall identify those parcels used as homesteads in the county and the bill shall reflect the reduction;

The property owner shall register proof of eligibility with the county assessor or attach it to the deed before filing. The property must qualify for the credit before January 1 of the year following the assessment but the taxpayer shall have until October 10 of the year following the assessment to make his or her claim for the credit;

If the property qualifies for the credit it is immaterial who or what entity pays the tax;

If the property is transferred, the purchaser of the property shall notify the assessor of the new use of the property;

ACA 26-26-1119

No property owner shall claim more than one (1) homestead credit for any given year with the penalty for violation being repayment of the credit amount and the preparer of the tax books shall extend on the tax books a penalty of 100% of the amount of the unlawfully claimed credit;

If the property owner has unlawfully claimed a credit in a county other than the county where he or she has lawfully claimed a credit, he or she shall pay back the unlawfully claimed credit and the penalty at the time of payment of his or property taxes;

If the property owner has unlawfully claimed a homestead credit in the same county that he or she lawfully claimed a credit, then he or she shall elect to either:

- (a) Pay the entire amount of the unlawfully claimed credit and the penalty at the time of payment of his or her property taxes; or
- (b) Not claim a credit on any property in the county or state for two years.

After repayment of an unlawfully claimed credit and the penalty the property owner must re-register with the assessor in order to resume receipt of the lawfully claimed credit;

Every property owner shall report to the assessor a change in eligibility, or a change in use of the property, prior to January 1 of the year following the change. Upon failure to do so, in addition to requiring repayment of the unlawfully claimed credit, the designated preparer of the tax books shall extend, the correct property tax due along with penalty of one 100% of the amount of the unlawfully claimed credit.

If the owner has unlawfully claimed a credit in the same county that he or she lawfully claimed a credit, then the property owner shall elect to either:

- (a) Pay the entire amount of the unlawfully claimed credit and the penalty at the time of payment of the owner's property taxes; or
- (b) Not claim a credit on any property in the county or in the state for (2) years for each year that the credit was claimed unlawfully.

Penalties and debt, as set out above, shall bind the property and shall be entitled to preference over all judgments, executions, encumbrances, or liens, whenever created, until the debt and/or penalties are repaid. Penalties collected shall be remitted to the county treasurer to be credited to the general fund and tax credit repaid shall be remitted to the Treasurer of State for deposit in the Property Tax Trust Fund.

The property owner may appeal to the county court the determination that he or she has violated the above provisions and must pay the penalty and repay the credit.

No repayment requirements or penalties may be imposed against the property owner after the expiration of (3) years from the date the credit was claimed.

ACA26-26-1123

When a person sells his or her property, the county assessor shall assess the real property at twenty percent (20%) of the appraised value at the next assessment date after the date of transfer. The owner to whom title is transferred is not entitled to claim any limitation on the assessed value of the real property until the second assessment date after the date of transfer.

**5% CAP ON HOMESTEAD VALUES AND
10% CAP ON NON-HOMSTEAD VALUES**

Amendment 79

These benefits are not available for newly discovered real property or new construction or substantial improvements to real property;

ACA 26-26-1122

“Newly discovered real property” means real property that has never been on the assessment roll or that has changed use.

“New construction” means changes to real property that have occurred to real property already on the assessment roll.

“Substantial improvements” may be defined by ACD rule.

ACD Rule 4.08.1

“Substantial improvements” means renovation, reconstruction, and refurbishment occurring to further a change in the use and/or class of an improvement or that will add 25% or more to the contributory value of an improvement to the property. This term does not include normal maintenance on an improvement intended to only maintain its existing utility.

ACA 26-26-1123

When a person sells his or her property, the county assessor shall assess the real property at twenty percent (20%) of the appraised value at the next assessment date after the date of transfer. The owner to whom title is transferred is not entitled to claim any limitation on the assessed value of the real property until the second assessment date after the date of transfer.

CAPS FOR 65 AND OLDER AND DISABLED

Amendment 79

This benefit is not available for substantial Improvements to real property.

ACA 26-26-1122

“Substantial improvements” may be defined by ACD rule.

ACD Rule 4.08.1

“Substantial improvements” means renovation, reconstruction, and refurbishment occurring to further a change in the use and/or class of an improvement or that will add 25% or more to the contributory value of an improvement to the property. This term does not include normal maintenance on an improvement intended to only maintain.

ACA 26-26-1120

“Disabled person” means a person who is disabled for purposes of Subchapter XIX of the Social Security Act as in effect on January 1, 2003 for any period during the calendar year; or, is a permanently and totally disabled veteran as defined by 38 C.F.R., Part IV, as in effect on January 1, 2003; or, has received permanent and total disability insurance benefits for any period of time during the calendar year.

When a disabled owner or an owner that is sixty-five (65) years of age or older sells his or her real property, the purchaser shall not be entitled to claim any reduction to the property’s assessed value.

On or after January 1 of the year following the date of the sale, the county assessor shall assess the real property at its full market value, unadjusted for assessment limitations required by Amendment 79.

FREQUENTLY ASKED QUESTIONS

Q. “I’m not getting the full \$300.00 credit. Why didn’t you put more of my land on as a homestead”?

A. Amendment 79 provides that the amount of the credit allowed cannot exceed the amount of the tax owed.

Also, while it is true that there is no limit on the geographical size of a homestead, there are other limits. Only the land that is contiguous and is used for residential purposes (non-commercial) can be considered. Blacks Law Dictionary defines the word “contiguous” as meaning “touching at a point or along a boundary”.

Certainly the ground that the home and non-commercial outbuildings sit on and the area used as a yard, non-commercial vegetable gardens and any pet enclosures would be considered residential. There are homes that have very large landscaped areas that have no other use than residential.

However, ACA 26-26-1122 excludes all lands valued as pasture lands, agricultural lands, or timber lands. If the area is not improved, landscaped, or manicured as a yard it is not residential. Bush-hogging is more in keeping with pasture land and does not qualify an area as residential.

Q. “My sister and I own the home that our parents lived in before they died. The home is now my sister’s principal place of residence. Does the fact that I get a homestead credit on my separate homestead prevent my sister from receiving the credit on the home she lives in”?

A. No, ACA 26-26-1119 provides that no property owner shall claim more than one homestead under penalty of repaying the credit amount and a 100% fine. As long as the sister is the one that “claims” the homestead the credit should be allowed. For this purpose the sister is the one that should sign the application for the credit.

Q. “My wife and I have been separated for years but we have never gotten a divorce. She lives in the family home and my name is still on the deed and mortgage but I have a separate home in my name. Does the fact that there is a homestead credit on the home she lives in prevent me from receiving a credit on my separate homestead”?

A. No, not necessarily. The problem is that there is probably a greater danger of fraud in the current situation than there is in the brother and sister situation. You must satisfy yourself that the parties actually live separate and apart. A court ordered separation document, although not absolutely determinative of the question, would be helpful. Proving entitlement is the duty of the applicant, however we are aware of a case where one imaginative assessor sent a staff person to the home the husband was claiming and recorded the electric meter reading for a couple of months and found that no electricity was being used.

Q. “My uncle left my aunt and moved in with another woman. He owns, in his name only, the house where my aunt remains. Is my uncle entitled to continue to receive the credit on the house where my aunt lives”?

A. Yes, but only for the year in which he left. ACA 26-26-1118 provides that if the property qualifies at any time during the year it shall remain qualified for the remainder of the year regardless of a change in use. When he moved out the property ceased to be his principal place of residence. The property will no longer qualify as of January 1 of the year following the year in which he moved out.

Q. “My aunt is now living with my wife and me and paying us \$500.00 dollars a month. Am I still entitled to receive the credit”?

A. Yes, for this year only. The amount of the rent indicates a change in use to commercial. If the amount was \$100.00 it would present a more difficult problem. Such a small amount would seem to indicate that there was no intent or effort to make a profit and therefore would not be commercial operation.

Q. “I just bought a house this year, 2006. What is my assessment going to be”?

A. ACA 26-26-1123 provides that when property sells, it goes to full value as of the next assessment date. Therefore your assessment will not change this year but will go to full value on January 1 next year, 2007. If your county is finishing a reappraisal in 2007, your property will be assessed at the new , 2007, value. If your county is not finishing a reappraisal in 2007 the property will be assessed at the current full value as established in the last county-wide reappraisal.

Q. “I am totally disabled and receive a disability check from the German Government, am I eligible to have my assessment capped at its current level”?

A. Yes, assuming you can produce proof that the check amount is for total and permanent disability. ACA 26-26-1120 provides that one of the meanings of the term “disabled person” is that the person received permanent and total disability insurance for any period of time during the calendar year.

Q. “I am buying my home on a lease purchase arrangement. Am I entitled to receive the homestead credit on that home”?

A. No. ACA 26-26-1120 provides that a person buying their home on a recorded contract to purchase is entitled to the credit but it does not mention a lease purchase and they are not the same thing.

NOTE: THESE GUIDELINES ARE ADVISORY ONLY

UNLESS OTHERWISE AUTHORIZED BY LAW, ONLY THE ATTORNEY GENERAL OF THE STATE OF ARKANSAS HAS THE AUTHORITY TO GIVE LEGAL OPINIONS FOR AN AGENCY OF THE STATE. THE ASSESSMENT COORDINATION DEPARTMENT HAS NOT BEEN SO AUTHORIZED.

Homestead Credit Application/Sales Verification

Owner's name: _____

Mailing address: _____

Parcel number: _____ Sec. ___ Twp. ___ Rng. ___

Subdivision/addition: _____

Legal description: _____

Acreage: _____ Physical Address: _____

Agent: _____ Closing date: _____

Tax credit registration for assessment year: _____ Phone number: _____

In accordance with Amendment 79 of the Arkansas Constitution, homeowners may be eligible for up to a \$300 real estate tax credit on their homestead properties. Additional benefits may apply to those who are 100% disabled or age 65 or older (the assessment on your house and associated land may not increase unless you make substantial improvements). A homestead is a residential property of which you are the owner of record and which is used as your principle place of residence.

By you answering the following questions and returning the form to the _____ County Assessor's Office, we will be able to determine if you are eligible for the credit and/or additional benefits. You will also contribute to fair and equitable assessment of real property in our county. It is necessary to verify sales to have accurate information, though **answering questions 8 through 13 is optional.** Please place an **X** for each correct answer.

Tax Credit/Amendment 79 Benefit Registration

- 1. ___ I am the owner of record by recorded _____ (deed/contract) of the property listed above, which _____ (is/is not) my principle place of residence.
- 2. ___ Either I or a joint owner is 100% disabled. (Provide proof of receipt of permanent and total disability benefits)
- 3. ___ Either I or a joint owner is 65 years of age or older. Date of birth: ___/___/___ (Provide proof of age to receive benefits).
- 4. ___ I have transferred ownership of this residence, but retained a life estate and reside at this property.
- 5. ___ I am the owner of record of the property listed above, but I reside in a nursing/retirement center.
- 6. Use of the property at the time of sale was: Single family residence ___ Multi-family ___ Commercial ___ Vacant Land ___ Other ___ (Describe on back of this sheet)
- 7. Recent changes to the property. _____ Date of change _____

Sale Price Verification

- 8. Total sale price \$ _____
- 9. Is sale fulfillment of a sales contract? Yes ___ No ___ If yes, the year of the original contract _____
- 10. Was there a trade of property or personal property included in the sale? Yes ___ No ___ If yes, describe _____ Estimate of value _____
- 11. Was sale between relatives? Yes ___ No ___ If yes, state relationship _____
- 12. Was the sale forced by court order, divorce, estate settlement or foreclosure? Yes ___ No ___
- 13. Was there an appraisal of the property when sold? Yes ___ No ___

If you have any questions regarding this form, please call the _____ County Assessor's Office at _____.

I hereby acknowledge that the above statements are true and correct to the best of my knowledge, information and belief.

Signed _____ Date _____

Witness _____ Date _____