LSC presentation on real property taxation
Joint Committee on Property Tax Review and Reform
January 10, 2024

Good morning. My name is Sam Benham, and I am the Division Chief of Taxation and Economic Development in LSC's Office of Research and Drafting. I'm here to give a brief overview of real property taxes. My presentation includes references to some appendices and other resources that I will not read, but that are included with my remarks to give you additional details.

Appendix A is a glossary of terms, included because property tax has developed its own terms-of-art to shorten otherwise complex concepts. I will use and explain these terms in this presentation, but the appendix will be a helpful reference. A term that is defined in that glossary will appear in boldface the first time I use it in this presentation.

I like to conceptualize property taxes as a tapestry—a large, finished work made up of many intricately connected threads. In this presentation, after a brief overview of the development of property taxes, I will examine some of these threads. I will discuss the first step of the property tax process—valuation. Then, I will discuss how property taxes are levied and authorized. Next, I will focus on credits, reductions, and exemptions. I will conclude with a brief look at property tax complaints, appeals, and procedures and delinquent tax enforcement.

Early history

Local governments, or **taxing authorities**, may levy taxes on real property, including mineral interests and manufactured homes, and upon tangible personal property owned by public utilities. Property taxes are Ohio's oldest taxes, arising when Ohio was still a territory. Initially, the taxes were the largest revenue source for local governments and the state, which continued to levy property taxes until 1968. County auditors, county treasurers, and the Tax Commissioner are largely responsible for administering property taxes.

Unlike most other taxes levied in Ohio, the Ohio Constitution places several restrictions and guidelines on the mode and manner of valuing property and levying property taxes. In addition, as you might imagine, property tax law has accrued a multitude of changes in its over-two-century tenure. At times, the General Assembly has made significant reforms to the tax. When appropriate, I will reference and discuss these reforms.

In Ohio's early years, almost everyone was a farmer, so property values were set according to how fertile land was for farming. That changed when Ohio began developing an extensive network of canals. Land closer to proposed canals became much more valuable than land located further afield. To create a fairer system of taxation, the General Assembly, in 1825, transformed the property tax from an agricultural productivity basis to an *ad valorem* tax — a tax calculated based on land's market value. This change ensured that owners of more valuable land would bear a higher share of taxes than those who owned less valuable land. This system of valuing real property was later mandated by Ohio's 1851 Constitution, which created the requirement that "[l]and and improvements thereon shall be taxed by uniform rule according to value."[1] As I shall discuss in a moment, this **uniform rule** continues to control and inform the process of assessing real property.

Assessment

The property tax cycle begins with determining a property's value. A moment ago, I mentioned that the 1851 Constitution's uniform rule requirement continues to control the assessment process. "Continues," however, may be the wrong description, at least with reference to the year 1851, because that rule was unenforced, at least as it is currently understood, until the 1970s, and not even recognized until 1964. After a series of Ohio Supreme Court cases and legislative changes, the present rule was clearly established.[2]

The Ohio Constitution requires that all real property, except agricultural property, be valued for taxation according to its **true value**. Ohio courts have determined that true value means its "fair market value," regardless of use. In other words, property can't be valued according to its current use as a house, field, or warehouse. It must be valued according to what price it would sell for on the open market. However, the Ohio Constitution allows agricultural land to be valued according to its value for use in agriculture (its **current agricultural use value** or **CAUV**).[3] If property is taxed at anything other than its full true value, each piece of property must be taxed on the same lesser percentage of that value, by applying the same **assessment rate**, which, for real property, currently equals 35% of true or CAUV value.

In Ohio, assessment involves a two-step process for real property: (1) determining its true value or CAUV, and then (2) determining its **taxable value**. Each property has its true value adjusted every three years, through two alternating processes that each occur every six years. The first is the sexennial **appraisal**, in which every property in a county is physically viewed and appraised by the county auditor to determine its fair market value. The second is the triennial update, in which market values are adjusted to account for broad trends in the property markets. In the triennial update, the county auditor, with assistance from the Tax Commissioner, determines the average rate of change in value for each class of property – such as residential and industrial–since the last sexennial appraisal, and adjusts the value of each property in that class accordingly. Appraisals and updates are done in each county according to a fixed three-year

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[1] Ohio Constitution, Article XII, Sec. 2.

[2] See, e.g., *State ex. rel. Park Inv. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964); *State ex rel. Park Inv. Co. v. Bd. of Tax Appeals*, 32 Ohio St.2d 28 (1972).

[3] Ohio Constitution, Article II, Sec. 36. For more information about CAUV, please see the LSC Members Brief on the topic entitled **Current Agricultural Use Value**, which is available on LSC's website: lsc.ohio.gov.

schedule, published by the Tax Department, so not every county undergoes an appraisal or triennial update in the same year.[4]

State law and rules adopted by the Tax Commissioner prescribe the methods used to appraise real property. In general, the best evidence of a parcel's true value is its recent arm's-length sale price, or the price paid for the parcel by a willing buyer to a willing seller. Otherwise, county auditors may use, in general, three appraisal methods to appraise property—the comparable sales approach, income approach, or cost approach. Each approach is discussed in detail in the attached LSC Members Brief entitled **Property Tax: The Triennial Update**, but the most important point is that the goal of each is to determine the price a property would command on the open market.

Tax rates

Now that I've summarized how property is assessed for taxation, I will discuss how property taxes are levied. Many political subdivisions are authorized to levy property taxes, including the most well-known: municipalities, townships, counties, and school districts. Other taxing authorities include special districts created, separately or jointly, for the maintenance or management of such things as roads, colleges and other schools, or detention facilities, or to provide services such as police, fire, EMS, ADAMH services, recreation, or waste disposal. Property taxes may be categorized into three types:

- **Inside millage**, which are taxes levied on up to 1% of a property's true value without the approval of voters;
- **Voted millage**, which are taxes levied with the approval of voters in excess of that 1% limitation; and
- **Charter millage**, which are taxes provided for in the charter of a municipal corporation and may be levied without voter approval outside the 1% limitation.

Inside millage

The Ohio Constitution provides that the combined tax rate levied by all overlapping taxing authorities on any piece of property cannot exceed 1%, or 10 **mills**, of the property's true value without approval from voters or authorization in a municipal charter.[5] A mill is 1/10 of one cent so, the **1% limitation** imposed by the Constitution is also sometimes referred to as the **10-mill limitation**, which is how it is called in statute.

Unvoted millage has existed since the inception of property taxes, but was first addressed in the Ohio Constitution in 1929, when voters approved a 1.5% limitation on inside millage. The limitation was soon reduced to 1% during the Great Depression. Inside millage may be used for

[4] See The Department of Taxation's "Year of Sexennial Reappraisal and Triennial Update for Ohio's 88 Counties, 2023-2028 (PDF)," available by conducting a keyword search for "reappraisal schedule" on the Department's website: tax.ohio.gov/.

[5] Ohio Constitution, Article XII, Sec. 2.

general purposes such as for current operating expenses, permanent improvements, or debt and a few special purposes specified by law.

Guaranteed millage

Because several overlapping taxing authorities simultaneously tax the same property, inside millage is allocated between them. A board of local officials called the **county budget commission** performs this allocation, but its discretion to do so is limited. A significant share of inside millage is automatically allocated to certain subdivisions on the basis of what it received between 1929 and 1933, when the limit on inside millage was reduced from 15 to 10 mills. This share is often referred to as "guaranteed millage." Every subdivision that was in existence between those years is generally entitled to receive a share of inside millage equal to two-thirds of the average annual amounts it received between those years, unless it requests a lower rate.

Free millage

Inside millage not allocated as guaranteed millage is "free millage," which may be allocated, in the budget commission's discretion, to any taxing authority, provided that the need for such millage is shown in the authority's budget. The allocation occurs each year and may change from one year to the next. Taxing authorities that did not exist between 1929 and 1933 may be granted free millage from a county budget commission; however, they are not guaranteed any portion of inside millage allocated according to the historical allocation. The proportion in which shares of inside millage are allocated to taxing authorities varies by county.[6]

Voted levies

Taxing authorities may levy property taxes in excess of the 10-mill limitation, subject to voter approval, to fund their operating expenses or, in some cases, permanent improvements or debt service. The characteristics of each authorized levy vary. Levies can generally be arranged into three categories:

- Those levied at a fixed rate (**fixed-rate levies**);
- Those levied at a rate that will generate a fixed sum of revenue (**fixed-sum levies**); and
- Those levied to generate a fixed amount each year to pay the debt service on general obligation bonds (**debt levies**).

There are various types of levies within these categories, and the tables in **Appendix B** distinguish between and summarize them. I will here give a brief overview of the most common types.

Levy types

There are four types of property tax levies that are generally available to taxing authorities:

- An *additional levy* is a fixed-rate tax generally levied for a single purpose such as for current expenses or permanent improvements. This is the most common type of property tax levy and there are many authorized purposes.

[6] *Washington Local School Dist. v. Budget Comm'n.*, 73 Ohio St.3d 700, 703 (1995).

- A *renewal levy* reauthorizes an expiring levy at the same voted rate while continuing to account for effective millage reductions caused by the **tax reduction factors** (to be explained later). It may be combined with an additional levy on the ballot.
- A *replacement levy* replaces one or more existing levies and may increase or decrease the tax rate or replace it at the same rate. Multiple levies may be combined into one replacement levy if both levies have the same purpose and are set to expire in the same year or are both levied for a continuing period of time, i.e., permanently. Unlike a renewal levy, a replacement levy resets the **effective tax rate** of a fixed-rate levy to align with the voted millage.
- A *debt levy*.

There are additional types of levies that are available only to specific taxing authorities, most commonly school districts, including:

- *Emergency levies*, which are school district fixed-sum levies for the purpose of meeting an emergency need or to prevent an operating deficit. They may be renewed for the same or a different sum.
- *Substitute levies*, which are levied to replace one or more emergency levies. The rate of the tax is determined in the first year, yielding an amount equal to the total annual proceeds derived from the levies being substituted. Though considered a fixed-sum levy, proceeds increase each year as new property is added to the tax list.
- *Combination levies*, which may combine levies for operating expenses or permanent improvements with debt levies or even with a school district income tax.

Political subdivision budgeting and levy authorization

An integral aspect of levying a property tax is the requirement for taxing authorities to adopt **tax budgets** and have those budgets approved by the **county budget commission** (CBC), which is comprised of the county auditor, treasurer, and prosecuting attorney. This requirement, which is imposed by the state and originated in the 1910s, was designed to encourage responsible local spending and budgeting.

The CBC undertakes a variety of tasks, including approving local tax budgets and distributing certain local government funds. These tasks are more fully discussed in the attached LSC Members Brief entitled the **Political Subdivision Budgeting Process**.

One of the primary functions of the CBC is to approve certain property tax levies. In particular, the CBC must, upon finding them to be properly authorized, approve the levy of the following:

- Levies in excess of the 10-mill limitation, i.e., voted millage;
- Inside millage debt levies; and
- Guaranteed inside millage.

Other than free millage, the CBC does not have the authority to reduce the rate of a levy it is required to approve — recall that the purpose of the CBC was to ensure local fiscal discipline, not to reduce a local government's sources of funding. However, while the CBC is not able to unilaterally reduce the rate of a required levy, a taxing authority may do so in two ways. First, for a voted tax, a taxing authority may simply use its authority to levy less than the full rate of the tax. Alternatively, a taxing authority may use the CBC to indirectly reduce the rate of a levy the commission would otherwise be required to approve. The CBC is required to reduce the rate of such a levy if it is not properly authorized, which occurs if a taxing authority does not adequately account for the levy proceeds in its tax budget. Thus, a subdivision could reduce its tax budget below what the full proceeds from the levy would fund. Then the CBC would be required to reduce the tax rate to conform to the subdivision's reduced tax budget.

Reductions and exemptions

At this point, we have discussed true and taxable value, which is the property tax base. We have discussed property tax rates and how taxes are levied and authorized. In a simple world, this would be the complete summary of property taxation, base × rate = tax. However, we are just at the point where things really get interesting — where we start talking about reductions and exemptions.

Tax reduction factor

The first reduction I will discuss is also the most complex. Even the name can be confusing, because, even though it is a reduction in taxes through a tax credit, it is often referred by the factors that are used to calculate the credit—the H.B. 920 **tax reduction factors**—after the bill that first enacted the credit in 1976. The tax reduction factors play a significant role in how property tax bills are calculated and interact with many different parts of the property tax system. If you are interested in a more comprehensive look at tax reduction factor law, see the attachment entitled **LSC presentation on H.B. 920 tax reduction factors**, which is a presentation I gave last year to the House Ways & Means Committee.

Although the law's operation appears complex and sometimes may yield unexpected results, the purpose of the tax reduction factors is very simple: to prevent appreciation in real property values from causing commensurate increases in real property taxes levied by a taxing authority as a whole by applying a **H.B. 920 credit**. The tax reduction factor law acts as a sort of inflation indexing adjustment, ensuring that rising property prices alone do not cause property tax increases. Without the H.B. 920 credit, an increase in property values of, say, 10% would be translated into a 10% increase in property taxes. H.B. 920's purpose is accomplished by essentially stabilizing the amount of taxes that may be charged against the existing stock of real property. When the value of that stock of property appreciates, the H.B. 920 credit ensures that the total amount of taxes charged against that property remains about the same.

The simplicity of the tax reduction factor law's purpose is easily obscured by its actual operation. The law is complicated by the following factors:

- Some property tax levies are exempted from reduction. Specifically, inside millage, charter millage, debt millage, and fixed-sum levies are not subject to reduction factors.

(Reduction factors are not relevant to debt millage or fixed-sum levies as they are designed to raise the same amount each year.)

- The reduction applies separately to two distinct classes of real property — **Class I property**, which is property used for residential and agricultural purposes, and **Class II property**, which is all other property. To avoid complications with the uniform rule, Ohioans passed a constitutional amendment in the 1970s to authorize these two separate reduction factors. This amendment ultimately limits the General Assembly's authority to alter the computation or application of the tax reduction factors so long as two reduction factors endure.[7]
- To accomplish their purpose, the tax reduction factors necessarily distinguish merely inflationary increases in property values from increases resulting from newly built property. The factors are computed on the basis of the same stock of property as existed in the preceding year, i.e., property that was taxable in the preceding year, that continues to be taxable in the current year, and that has not changed from one class to the other since the preceding year. In other words, the H.B. 920 credit is computed only on the basis of property within the same class carried over from the preceding year to the current year; accordingly, it is referred to as **carryover property**. There is Class I carryover property and Class II carryover property.
- The reduction is suspended in a school district if it would deprive the district of a minimum level of operating revenue. This qualification is known as the **20-mill floor** since it is intended to guarantee that school districts have at least 20 mills worth of property taxes available to pay operating expenses. The 20-mill floor works by suspending the tax reduction factor once the reduction has reduced the total taxes charged against a class of property for current operating expenses, including both inside and voted fixed-rate millage, to 2% of the class's taxable value, which is equivalent to 20 mills in property taxes. In most cases, the 20-mill floor does not mean that the tax reduction does not apply at all; in fact, the reduction does apply in most cases, but the reduction is not as great as it would be if the floor did not intervene to diminish the extent of the reduction. Currently, just over one-half of school districts are on the 20-mill floor in at least one class of real property. A separate 2-mill floor applies to joint vocational school districts. The constitutional amendment that authorizes two tax reduction factors also gives discretion to the General Assembly to set a floor for any taxing authority. However, if the General Assembly does set a floor, then the floor must be the same across that entire class of taxing authorities.[8]

Rollbacks

Because the tax reduction factors do not actually reduce the rate of any levy, they are properly classified as a tax reduction. After the reduction factors are applied, county auditors calculate something called the **effective tax rate**, which is merely a short-hand, artificial construct

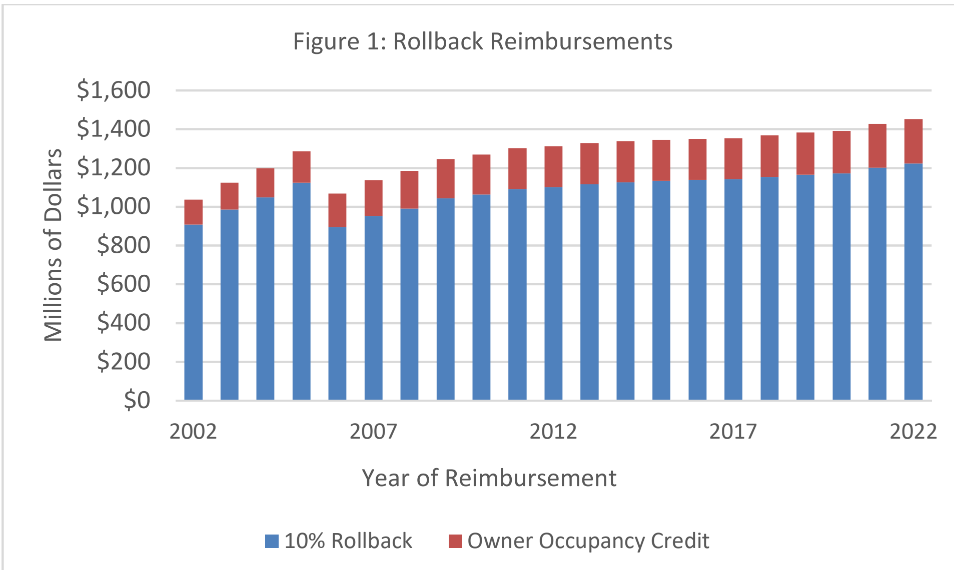
[7]Ohio Constitution, Article XII, Sec. 2a.

[8]Ohio Constitution, Article XII, Sec. 2a(D).

used to describe what the rate of the tax against a class of property would be if the tax reduction factors actually did reduce the levy's rate. After effective tax rates are calculated, the next reductions to apply are often referred to as "rollbacks."

Most homeowners qualify for the rollbacks, which are direct credits against the homeowner's tax liability. There are two different rollbacks: (1) the **10% non-business credit**, which reduces the tax due by 10% on one-, two-, or three-family homes and most agricultural property, and (2) the **2.5% owner occupancy credit**, which reduces the taxes due by 2.5% on owner-occupied homes. The General Assembly created the 10% rollback in 1971, the same year it authorized the state's income tax. The 2.5% rollback was added later, in 1979.

The state reimburses taxing authorities for the cost of both rollbacks from the GRF. As reflected in Figure 1, below, in **tax year** 2022, the 10% credit cost the state $1.2 billion. The cost of the 2.5% credit was $230 million.



In 2013, the state began to phase-out the rollbacks. New and replacement levies approved in or after November 2013 are not included in computing either rollback. Taxpayers pay the full cost of those levies. As a result, the cost of the rollbacks have increased over the past ten years, but at a slower pace than they otherwise would have because they apply to a smaller share of tax levies.

Homestead exemption

In addition to the rollbacks, the **homestead exemption** is another important homeowner property tax relief program. The homestead exemption is a property tax credit for the primary residence, or "homestead," of qualifying individuals. The credit essentially exempts a portion of the value of the homestead from taxation. The standard exemption is available to individuals who are (a) at least 65 years of age or older, (b) permanently and totally disabled, or (c) at least 59 years old and the surviving spouse of a person who previously received the exemption.

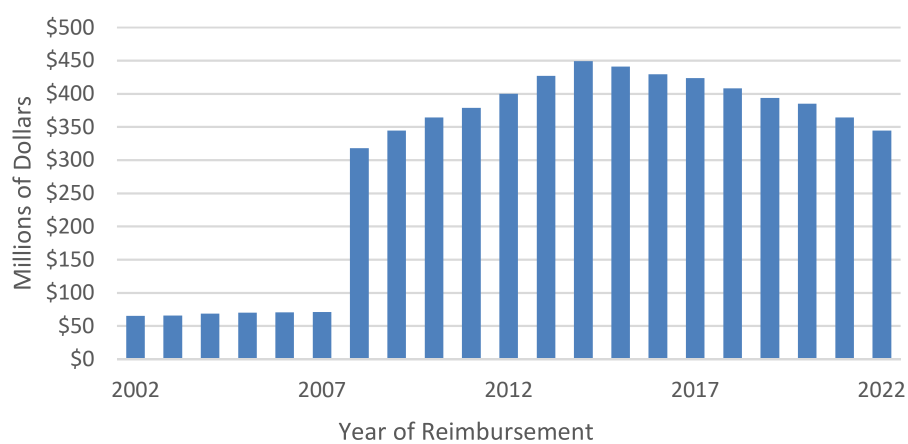
The Ohio Constitution specifically authorized the homestead exemption in 1970. The exemption was initially means-tested, but in 2007, the General Assembly expanded the exemption by removing the income limit. Then, in 2014, the state reinstituted an income limit. Homeowners who qualified before 2014 can continue to receive the exemption, regardless of their income.

For many years, the exemption amount was a flat $25,000, but an annual inflation adjustment was added in 2023 ($26,200 for 2023). For 2023, homeowners must have an Ohio modified adjusted gross income of $36,100 or less.

Additionally, an "enhanced" exemption is available for homes of military veterans who are totally and permanently disabled and their surviving spouses and for surviving spouses of peace officers, firefighters, or other emergency responders who die in the line of duty or by an injury or illness sustained in the line of duty. No income limit applies to these enhanced exemptions. For 2023, the enhanced exemption amount equaled $52,300.

Like with the rollbacks, the state reimburses local governments for their revenue loss from the homestead exemption. As reflected in Figure 2, below, reimbursements grew significantly in 2007, peaked at 2014, and then the growth rate started to taper off as a result of the policy changes discussed earlier. In 2022, those reimbursements equaled around $344 million.

Figure 2: Homestead Exemption Reimbursements



Other exemptions

Apart from the homestead exemption and rollbacks, Ohio also offers full or partial exemptions to certain property. While the Ohio Constitution limits the General Assembly's authority to value and assess real property, courts have held that the General Assembly has broad, exclusive authority to grant property tax exemptions, including both full and partial exemptions.[9] LSC has compiled a list of these exemptions in **Appendix C**.

Perhaps the most significant partial exemptions, other than the homestead exemption, are economic development-related exemptions. These include tax increment financing

[9] See, e.g., *Denison University v. Bd. of Tax Appeals*, 2 Ohio St. 2d 17 (1965); *Dayton v. Cloud*, 30 Ohio St. 2d 295 (1972).

exemptions, or TIFs; community reinvestment areas, or CRAs; and enterprise zones. In general, these programs allow local governments to partially exempt the increased value of property following development or other improvements as a means to encourage economic development in a particular area. **Appendix C** includes a fuller description of each of these programs if you'd like more detailed information.

Property tax complaints

Once a county auditor determines a property's value and applies any eligible reductions or exemptions, the property owner or, in certain circumstances, a local government can challenge that property's value or exemption eligibility. These challenges are generally filed for years in which the property undergoes a reappraisal or triennial update.

The owner can file a formal complaint any time before March 31 of the following year. These complaints are filed with the **board of revision**, or BOR, which consists of the auditor, treasurer, and a county commissioner. The owner can appeal BOR decisions to the state Board of Tax Appeals.

Local governments can also file property tax complaints under certain situations. The General Assembly limited these situations recently, beginning in tax year 2022. If you would like more information about these new limitations, I encourage you to review the LSC **Final Analysis of H.B. 126 of the 134th General Assembly**, which is available on the General Assembly's website: legislature.ohio.gov.

Property tax collection

Now that I have discussed how a property's value and tax liability is calculated and potentially challenged, I will briefly discuss some mechanics of how real property taxes are collected. After property is assessed, the county auditor prepares a **tax list and duplicate** that allows the county treasurer to prepare property tax bills. Property taxes are generally paid in arrears, meaning that they are due in the year after they are levied. For example, taxes for tax year 2023 will be paid in 2024. Payments are due in two semiannual installments. The statutory due dates for these installments are December 31 and June 20. However, in practice, these due dates are often extended into January or February, and July or August, depending on the county and year.

Delinquent tax collection

If property owners do not pay their taxes on time, those taxes will become delinquent. County officials have many options to collect delinquent taxes, including a tax foreclosure or a sale of a delinquent tax certificate, which gives a private party the right to foreclose on the tax lien. If you'd like more information on these various collection options, please see the LSC Members Brief entitled **Delinquent Property Tax Collection**, available on LSC's website.

Before foreclosure, a delinquent taxpayer will generally first have an opportunity to enter into a delinquent tax contract. Through such contracts, the property owner pays delinquent taxes in installments over a period of up to five years. No interest or penalties accrue as long as the contract is valid, meaning the homeowner is current in payments. The county treasurer must offer a contract to homeowners and farmers at least once, and may offer a contract to other property owners at the treasurer's discretion.

Conclusion

Having now explored the major threads comprising the tapestry of real property taxation, this concludes my presentation. I'm happy to answer any questions you may have.