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Taxation - Ad Valorem - Homestead

A duplex is properly classified as Class II property under Code of Alabama, 1975, §40-8-1 and the homestead exemption does not apply; the proposed constitutional amendment to Section 217, Constitution of Alabama 1901, Act 541, Legislature of Alabama 1979, will result in all residential property including duplexes being classified as Class III property

Dear Senator:

Your request for opinion of the Attorney General dated October 26, 1979 poses two questions as follows:

"(1) Can a 'duplex' which is occupied on one side by the owner and his family as a single family dwelling be maintained and assessed for ad valorem tax purposes under the category of Class III property according to Section 40-8-1, Code of Alabama 1975?

"(2) Can a homestead exemption be claimed on that half of the 'duplex' that is assessed and taxed as Class III property?"

I regret to have to inform you that the answers to both of your questions are in the negative. Code of Alabama 1975, §40-8-1, provides, in part, as follows:

"(a) On and after October 1, 1978, with respect to ad valorem taxes levied by the state, and, unless otherwise provided, with respect to ad valorem taxes levied by a county, municipality or other taxing authority other than the state, all taxable property shall be divided into the following classes and no other and shall be assessed for ad valorem tax purposes at the following ratios of assessed value to the fair and reasonable market value of such property, or, as may be provided by law, to the current use value of such property:

"Class I. All property of utilities used in the business of such utilities, 30 percent.

"Class II. All property not otherwise classified, 20 percent.

"Class III. All agricultural, forest and residential property, and historic buildings and sites, 10 percent."

The questions have been answered in a prior opinion of the Attorney General, addressed to Honorable Ralph P. Eagerton, Jr., Commissioner of Revenue, on January 25, 1979. The most pertinent part of the opinion stated as follows:

"Q: 15. Is there any distinction between the definitions of the term residential property as provided in the constitutional amendment, Act 6, and in the implementing statute, Act 46?

"A: No. In the case of Boswell v. Howell affirmed by the Alabama Supreme Court on April 6, 1973, without opinion, the Court held that the implementing statute cannot alter the definition in the constitutional provision. If there is a distinction, the definition in the constitutional provision must prevail. However, in the present instance it appears that the two definitions reach the same meaning with slightly different words. 'Owner-occupied residential property' is 'real property used exclusively as a single-family dwelling by the owner thereof.'

"Q: Can homestead exemptions be claimed for property not in Class III?

"A: No. Only Class III property is subject to the application of homestead exemptions.

"Q: 17. Are duplexes where one unit is occupied by

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"the owner, Class III property?

"A: No. A duplex is not a single-family dwelling."

The duplex is in Class II which carries the 20% assessment and the homestead exemption cannot be claimed on any part of the property.

In your request you ask a prospective question in regard to Act 541, Legislature of Alabama 1979, a proposed constitutional amendment. The question you ask is as follows:

"In light of the above letter, it could be that Act No. 79-541, which is a constitutional amendment which passed this past session, but is subject to an election approval by the people, might should it pass, clear up this whole matter. Would you be able to give me an unofficial expression of your opinion of Act No. 79-541 in light of the problem raised in this letter?"

The proposed amendment to Section 217, Constitution of Alabama, 1901, provides, in part, as follows:

"Section 217. (a) On and after October 1, 1978, all taxable property within this state, not exempt by law, shall be divided into the following classes for the purposes of ad valorem taxation:

"Class I. All property of utilities used in the business of such utilities.

"Class II. All property not otherwise classified.

"Class III. All agricultural, forest and residential property, and historic buildings and sites. Licensed hotels and motels are not deemed to be residential property."

The answer to your prospective question is in the affirmative. All residential property is placed in Class III in the proposed Constitutional Amendment, Act 541, supra; therefore, a duplex would be in Class III and the owner could claim his exemption on the half he occupies.

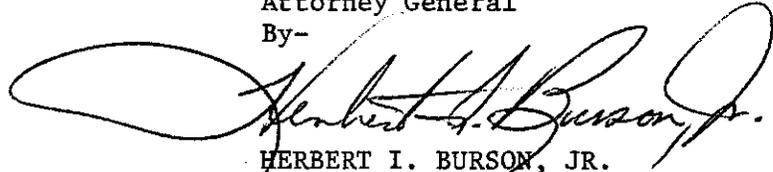
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I trust that the above responses to your questions are adequate but if not, please make additional inquiry.

Sincerely,

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By-



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