



2009-018

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

November 25, 2008

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Honorable Lucy Hester
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Municipalities - Ad Valorem Taxes -
Refunds - Assessment Date - Jefferson
County

The municipal ad valorem taxes collected on October 1, 2007, by the City of Mountain Brook are based on the assessment for the preceding tax year (October 1, 2006) according to section 11-51-40 of the Code. No refund is authorized when there is no error in the assessment.

Dear Ms. Hester:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Mountain Brook.

QUESTION

Pursuant to section 40-10-160 of the Code of Alabama or other applicable statute, may the City of Mountain Brook, absent an error, lawfully issue a partial refund of municipal ad valorem taxes paid to the Jefferson County Tax Collector where the rate classification of the property changed from Class II to Class III in January 2007 when the taxpayer purchased the property, and where the amount of tax due and paid on December 31, 2007, was properly based on Class II rate classification of the real property?

FACTS AND ANALYSIS

The State, along with the various counties, assesses property for ad valorem taxes on October 1 of any given year. The taxes for that year are not due and payable until the following October 1. Section 11-51-1 of the Code of Alabama sets out the general method by which municipalities can assess and collect ad valorem taxes. ALA. CODE § 11-51-1 (1994). You have informed this Office that the City of Mountain Brook, like many other municipalities, elects to collect its property taxes pursuant to an optional method of levy and collection as set forth in section 11-51-40 of the Code of Alabama. Section 11-51-40 states, in part, as follows:

Any municipality may by ordinance provide that the tax year for such municipality shall commence on October 1 of each year and end on the next succeeding September 30 and provide for the effective date of such ordinance and further provide that on and after each October 1 after the effective date of such ordinance *municipal taxes shall be based and due on state and county assessments for the preceding tax year and shall be due and delinquent at the time when the state and county taxes for the preceding tax year are due and delinquent.*

ALA. CODE § 11-51-40 (1994) (emphasis added). In effect, this statute allows municipalities to collect their ad valorem taxes based on assessments made by the state and county-assessing officials on the preceding October 1.

The taxpayer/homeowner who is the subject of your request bought his single-family residence from the builder on January 5, 2007. At the time of the conveyance, the property was reclassified from Class II property with a 20 percent assessment ratio to Class III property with a 10 percent assessment ratio. In other words, as of October 1, 2006, the single-family residence was properly classified as Class II property. On the following October 1, 2007, the property was properly classified as Class III residential property with a lower assessment rate. The state and county ad valorem taxes due on October 1, 2007, would be based on the October 1, 2006, assessment date. According to section 11-51-40 of the Code, the

municipal property taxes due on October 1, 2007, would be based on this same October 1, 2006, assessment date.

In the scenario you presented, the taxpayer/homeowner's municipal ad valorem tax due on October 1, 2007, was properly based and due on state and county assessments for the preceding tax year, or October 1, 2006. As such, any conveyance of property that occurred after the October 1, 2006, assessment date is not recognized until the following October 1, 2007, assessment date. This same question was addressed in Opinion 88-00175 issued by this Office on February 11, 1988. In that opinion, it was stated that United States Gypsum Company donated property to the City of Heflin on December 29, 1986. The question was whether the property was exempt from taxation for the 1987 tax year. This Office answered as follows:

The law date for ad valorem taxes in Alabama is October 1, the first day of the tax year, Quarterly Report of the Attorney General, Vol. 54, p. 50. Whoever owns the property on that date is liable for the taxes for the entire tax year. It is clear from your letter that United States Gypsum Company owned the subject property on October 1, 1986, the first day of the 1987 tax year. Therefore, the property was subject to taxation and was assessed to United States Gypsum Company for the 1987 tax year.

Opinion to Honorable Katie M. Turner, Cleburne County Revenue Commissioner, dated February 11, 1988, A.G. No. 88-00175.

Section 40-10-160 of the Code of Alabama allows any taxpayer to seek a refund of ad valorem taxes paid through "any mistake, or by reason of any double assessment, or by any error in the assessment or collection of taxes, or other error." ALA. CODE § 40-10-160 (2003). The taxpayer/homeowner, however, who is the subject of your request is not due a refund based on the facts you have presented. The City of Mountain Brook correctly collected the taxes due for the period beginning October 1, 2007, based on the assessment made on October 1, 2006, as allowed by section 11-51-40 of the Code.

Honorable Lucy Hester
Page 4

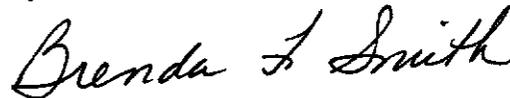
CONCLUSION

The City of Mountain Brook may not lawfully refund the municipal ad valorem taxes paid by the homeowner/taxpayer as there was no error in the assessment.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Keith Maddox, Legal Division, Revenue Department.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

TK/KM

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