2010-047

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
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March 4, 2010

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Honorable Don Armstrong
Shelby County Property
Tax Commissioner
Post Office Box 1298
Columbiana, Alabama 35051

Ad Valorem Taxes - Tax Sales - Redemption - Tax Rates

Act 2009-508 applies to tax assessment dates falling on or after October 1, 2009.

Dear Mr. Armstrong:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

(1) Regarding Class III property sold at tax sales in May 2009, should property upon which the owner continues to reside be re-classified as Class II on October 1, 2009, or should it remain classified as Class III?

(2) Regarding Class III property sold at tax sales prior to 2009, which has already been re-classified Class II, should it be returned to Class III on October 1, 2009, or should it remain classified as Class II?

(3) Regarding Class III property sold at tax sales prior to 2010, which has been reclassified Class II, if the owner produces evidence that he or she continued to reside on the property following the tax sale, should the property be returned to Class III for tax years prior to the tax year that commences October 1, 2009?

(4) If the answer to Question 3 is affirmative, would the amount necessary to redeem be calculated on the Class III basis upon which the tax sale purchaser had paid the property taxes for the years following the tax sale?

(5) Regarding Class III property sold at tax sales in 2010 and succeeding years, if the property is reclassified Class II based upon information available to me at the time, but the owner later produces evidence that he or she continued to reside on the property following the tax sale, should the property be returned to Class III for tax years prior to the tax year in which the owner provided his or her information?

(6) If the answer to Question 5 is affirmative, would the amount necessary to redeem be calculated on the Class III basis or on the Class II basis upon which the tax sale purchaser had paid the property taxes for the years following the tax sale?

FACTS AND ANALYSIS

The Alabama Legislature recently passed Act 2009-508 ("Act"), which the Governor signed into law on May 14, 2009. The effective date of the Act was September 1, 2009. The Act, as it relates to this request for an opinion, expands the definition of Class III residential property found under section 40-8-1(a) of the Code of Alabama.

Section 40-8-1 lists and defines four classifications of property used in the assessment of ad valorem taxes. The four classifications carry with them different assessment ratios. The four classifications are defined as follows:

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.

> Class IV. All private passenger automobiles and motor trucks of the type commonly known as "pickups" or "pickup trucks" owned and operated by an individual for personal or private use and not for hire, rent, or compensation, 15 percent.

ALA. CODE § 40-8-1 (Supp. 2009).

As stated, the passage of Act 2009-508 expands the definition of "residential property." Section 40-8-1(b)(6) now reads as follows: "RESIDENTIAL PROPERTY. Only real property, used by the owner thereof exclusively as the owner's single-family dwelling. ***This includes an owner who resides on the property and remains in possession of the property after it is sold at a tax sale***." ALA. CODE § 40-8-1(b)(6) (Supp. 2009) (emphasis added).

Before the passage of the expanded definition of "residential property," as you state, Class III property sold at a tax sale would be reclassified as Class II property on the succeeding October 1. In an opinion issued to Honorable Jack Williams, Jefferson County Tax Collector, dated February 3, 1999, A.G. No. 99-00101, this Office examined, in detail, the process of selling real property at delinquent tax sales. In that opinion, this Office stated that Class III property, when sold at a tax sale and with the original owner remaining in possession, should be reclassified as Class II property on the succeeding October 1. Act 2009-508 changes that holding. Now, with the passage of the Act, Class III property sold for taxes is no longer reclassified if the owner resides on the property and remains in possession.

A plain reading of the Act shows that the effective date of the changes is September 1, 2009; however, because of the nature of ad valorem tax assessment and collection, the "true" effective date was the following October 1, 2009. Additionally, the statute is assumed to be prospective only. *City of Daphne v. City of Spanish Fort*, 853 So. 2d 933 (Ala. 2003). There is no language in Act 2009-508 that would indicate that the changes are to have a retroactive effect. Because of the September 1, 2009, effective date, this Office is of the opinion that Act 2009-508 only applies to assessments made on or after October 1, 2009.

Your first question asks whether Class III property sold at tax sales in May 2009, and on which the original owner continues to reside, should be reclassified as Class II on October 1, 2009, or remain classified as Class III. Because the effective date of the change in classification is September 1, 2009, the property should remain as Class III when assessed on October 1, 2009.

Your second question is similar to your first. Class III property sold at a tax sale prior to 2009 will remain classified as Class III property. The date of the tax sale is not relevant. Beginning on October 1, 2009, any Class III property that has been sold at a tax sale with the original owner residing and remaining in possession thereof is lawfully classified as Class III property.

Question 3 is answered as Questions 1 and 2. If the original owner produces evidence that he or she has continued to reside on the property following a tax sale, the property in question, beginning on October 1, 2009, will be properly reclassified as Class III property. Any property, however, assessed as of October 1, 2008, or before, should not be reclassified as Class III property. Again, Act 2009-508 is not retroactive, and property falling under the category at issue was properly classified as Class II property at that time.

Because Question 3 is not answered in the affirmative, Question 4 is moot.

As to Question 5, for tax sales on or after 2010, any property that has been reclassified as Class II property may be properly reclassified as Class III property if you become aware that the property was occupied by the original owner. Your office can make this type of change pursuant to section 40-7-9.1 of the Code of Alabama, which states as follows:

> Whenever an error is found in the assessment, computation, or calculation of the amount of ad valorem taxes, penalties, or fees due thereon; or any mechanical error is found in the tax return, listing, and valuing of property upon assessments legally made or upon collections based thereon; the official charged with assessing and/or collecting such taxes, penalties, or fees is hereby authorized to correct the same in his records; provided, however, he shall file in the record the proper evidence to support his action. In the case of a tax assessor, he shall immediately certify same to the tax collector for collection, or if a refund is due, the tax collector shall refund said taxes out of the next moneys collected. In the case where the same official assesses and collects the taxes, he shall make the corrections herein authorized and collect any additional sums due, or if a refund of taxes is due, he shall make such refund out of the next moneys collected. Provided further, that the taxpayer shall furnish proof of such

> payment to the satisfaction of such official within two years from the date of such payment.

ALA. CODE § 40-7-9.1 (2003).

As to your last question, any property that was reclassified as Class III after being mistakenly classified as Class II must be redeemed on a Class III basis. The taxes that were actually due on the property were taxes based on a Class III assessment rate if the owner had remained in possession of the property. The tax sale purchaser would be entitled to a refund pursuant to section 40-7-9.1 for the difference between the Class II rate and the Class III rate.

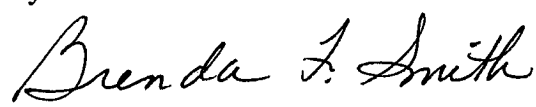
CONCLUSION

Based on the effective date of September 1, 2009, the provisions of Act 2009-508 only apply to property tax assessments made on or after October 1, 2009.

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

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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