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Honorable Andrew Bennett
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Ad Valorem Taxes - Tax Sales - Redemption - Tax Rates - Exemptions

Property occupied by the original owner after being sold at tax sale remains as Class III property.

Property occupied by original owner after being sold at tax sale not qualified for age and disability homestead exemption under section 40-9-21 of the Code of Alabama.

Dear Mr. Bennett:

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

QUESTION

A recent Attorney General's opinion dated March 4, 2010, states that Class III property sold at the May 2009 tax sale should remain classified as Class III if it continues to be owner-occupied. Would that also apply when the owner has just qualified for an Act 48 exemption in the same year that the property was sold in the tax sale?

For example, the taxpayer qualified for the disability exemption in March 2009 for the 2010 tax year. His home was sold at the May 2009 tax sale for unpaid 2008 taxes. He continues to reside on the property. Should his property be reclassified as Class

> III, or should his disability exemption apply for the 2010 tax year?

FACTS AND ANALYSIS

You refer to Attorney General's Opinion No. 2010-047, which was released by this Office on March 4, 2010. Act 2009-508 ("Act"), enacted by the Alabama Legislature and signed into law by the Governor on May 14, 2009, was discussed. The opinion stated, as follows, that the Act expanded the term of "residential property."

> 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).

Opinion to Honorable Don Armstrong, Shelby County Property Tax Commissioner, dated March 4, 2010, A.G. No. 2010-047 (emphasis in original). The opinion went on to discuss the effective date for the change enacted by the Act as it relates to ad valorem taxation assessment dates.

Your question, in essence, asks whether a taxpayer whose single-family residence has been sold for delinquent ad valorem taxes may qualify for the additional homestead exemption found under section 40-9-21 of the Code. This Office is of the opinion that the age or disability exemption will not apply.

It is through Act 2009-508 that the definition of "residential property" was expanded to include the definition given above. Prior to the passage of this Act, property that had been sold at a tax sale where the original owner continued to reside was reclassified at a higher assessment rate, or as Class II property, on the next assessment date. This reclassification increased the taxes that accrue on the property after the tax sale, thus increasing the amount of money needed for redemption. The Legislature did not include in the language of Act 2009-508 any intent that additional homestead exemptions would be allowed during the redemption period between the tax sale and the date of eventual redemption.

The Alabama courts have made it abundantly clear that tax exemptions are the exception, and taxation is the rule. *Ex parte Emerald Mountain Expressway Bridge, L.L.C.,* 856 So. 2d 834 (Ala. 2003). An additional homestead exemption cannot be implied in Act 2009-508 where there is no clear language granting such exemption. The taxpayer is only allowed the exemptions in effect on the assessment date for which the taxes were sold and no more.

When an original owner of real property that has been sold for taxes seeks to redeem the property within the statutorily allowed redemption period, section 40-10-122(a) of the Code provides the manner of redemption. It states, in part, as follows:

> In order to obtain the redemption of land from tax sales where the same has been sold to one other than the state, the party desiring to make such redemption shall deposit with the judge of probate of the county in which the land is situated the amount of money for which the lands were sold, with interest payable at the rate of 12 percent per annum from date of sale, and, on the portion of any excess bid that is less than or equal to 15 percent of the market value as established by the county board of equalization, ***together with the amount of all taxes which have been paid by the purchaser. . . .***

ALA. CODE § 40-10-122(a) (Supp. 2009) (emphasis added).

Obviously, the tax sale purchaser, and not the original owner, will pay the taxes that become due subsequent to the tax sale. Because the subsequent years' taxes will not be assessed in the name of the original owner, the original owner is not entitled to any additional exemptions that may accrue during this period.

Additionally, it is well settled that anyone seeking an exemption must prove that he or she falls within the exemption. *State v. Ross Grady Ins. Agency, Inc.*, 266 So. 2d 787 (Ala. Civ. App. 1972). A property owner whose property has been sold at a tax sale no longer owns the subject property. Obviously, a person cannot claim an exemption for property he does not own.

CONCLUSION

A taxpayer, whose real property has been sold at a tax sale, will not qualify for any further homestead exemptions that occur after the tax sale and

before eventual redemption. The taxpayer is only allowed the exemptions he or she qualified for and claimed as of the assessment date for which the property was sold.

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

Sincerely,

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By:

BRENDA F. SMITH
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