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May 25, 2011

Honorable Gene Ellison
Franklin County Revenue Commissioner
Post Office Box 248
Russellville, Alabama 35653

Ad Valorem Taxes – Limited Liability Company – Property – Homestead Exemptions – Agreements

Residential real property owned by a limited liability company ("LLC") is never entitled to a homestead exemption in the name of the limited liability company. An individual occupant of the subject property, however, may be entitled to the exemption if occupancy arises from a valid, arms-length executory sales agreement between the individual occupant and the LLC.

Dear Commissioner Ellison:

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

QUESTIONS

Can residential real property owned by an LLC receive a Class III classification based on occupancy by an individual who is also an officer of the LLC? Is there a conflict between A.G. Opinion No. 2008-049 ("*Ford*") and A.G.

Opinion No. 2007-043 ("*Nix*") on the resolution of this issue?

FACTS AND ANALYSIS

There is no conflict between the *Nix* and *Ford* opinions. In fact, the *Ford* opinion incorporates and expands the reasoning of *Nix*. Without engaging in a complete recitation of the two opinions, it is clear that a homestead exemption and Class III classification are never available to an LLC. Both opinions, and the governing statutes cited therein, make it clear that a homestead exemption is only available to individuals.

It is, however, equally clear that an individual occupying realty owned by an LLC may be eligible for Class III treatment under certain circumstances. If the individual occupant is a party to an executory sales contract with the LLC that meets the criteria set out in the opinions, that individual may be eligible for Class III treatment and a homestead exemption.

The assessing official must conduct an evaluation and make a factual determination that the occupant/applicant is: (1) a party to one of several types of qualifying executory land sales contracts wherein the occupant is the buyer or vendee, and (2) the transaction underlying the occupant's claim is an "arms-length transaction." *See Ford* at 5.

Where, as set out in the opinion request, the occupant is also an officer or member of the owner/LLC, the details of the underlying sales transaction should receive careful scrutiny. There must be reasonable contract terms consonant with those to be expected where the parties are disinterested strangers. Special attention should be paid to the reasonableness of the sales price, length of the contract term, and any other factors that appear to depart from a true arms-length real estate transaction.

CONCLUSION

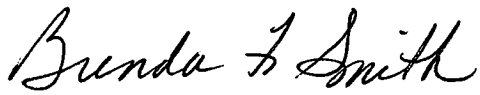
Residential real property owned by a limited liability company is never entitled to a homestead exemption in the name of the limited liability company. An individual occupant of the subject property,

however, may be entitled to the exemption if occupancy arises from a valid, arms-length executory sales agreement between the individual occupant and the LLC.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:



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