



2005 - 055

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

January 28, 2005

TROY KING
ATTORNEY GENERAL

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable J.T. "Jabo" Waggoner
Senate Minority Leader
Alabama State Senate
11 South Union Street, Suite 737
Montgomery, AL 36130-4600

Ad Valorem Taxes - Homestead
Exemption - Handicapped Persons -
Age Requirements - Income
Requirements

There is no income limitation for claiming a homestead exemption for someone who has a permanent and total disability, who is blind as defined by section 1-1-3 of the Code of Alabama, or for someone who is totally disabled as set forth in section 40-9-21 of the Code.

Section 40-9-21.1 of the Code specifically provides that anyone who qualifies for a homestead exemption pursuant to sections 40-9-19 or 40-9-21 is not required to annually claim the exemption after the initial qualification, but may verify that the conditions still apply thereafter on a form affidavit. This form affidavit does not require proof, only the signature of the affiant verifying that the conditions under which the exemption was granted still exist.

Dear Mr. Waggoner:

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

QUESTION

Is the person granted a homestead exemption based on retirement due to permanent and total disability or blindness required to claim the exemption annually? Is this person required to prove his or her adjusted income each year to retain the exemption previously granted?

FACTS AND ANALYSIS

Section 40-9-19(a) of the Code of Alabama provides as follows:

[H]omesteads of residents of this state, over 65 years of age, *or* who are retired due to permanent and total disability, regardless of age, *or* who are blind as defined in § 1-1-3 of the Code of Alabama, regardless of age or whether such person is retired, are exempt from *all state ad valorem taxes*.

ALA. CODE § 40-9-19(a) (2003) (emphasis added).

Section 40-9-19(d) of the Code of Alabama also provides a homestead exemption from *county and school district taxes*. This section states that the exemption applies to the following:

[R]esidents of this state, over 65 years of age who have an annual adjusted gross income of less than \$12,000 as reflected on the most recent state income tax return or some other appropriate evidence, *or* who are retired due to permanent and total disability, regardless of age, *or* who are blind as defined in Section 1-1-3, regardless of age or whether such person is retired.

ALA. CODE § 40-9-19(d) (2003) (emphasis added). This provision has an income limitation of less than \$12,000 for residents over age 65. There is no income limitation under this section for a person claiming a homestead exemption who has a permanent and total disability or who is blind as defined by section 1-1-3 of the Code of Alabama.

Section 40-9-21 of the Code provides an exemption for principal residences and 160 acres. This section states that the following persons and property are exempted from *ad valorem taxation*: "the principal residence and 160 acres adjacent thereto of any person who is totally disabled *or* who is 65 years of age or older having a net annual taxable income of \$7500 or less, as shown on such person's and spouse's latest United States income tax return." ALA. CODE § 40-9-21 (2003) (emphasis added). Again, there is no income limitation imposed by this section for a person claiming a homestead exemption under this section who is totally disabled. This section does have an income limitation of \$7500 for a person 65 years of age or older.

Exemption statutes are construed against the person asserting the exemption. Therefore, the burden is on the persons claiming the exemption to prove that they are entitled to take the exemption. *See Eagerton v. Terra Resources, Inc.*, 426 So. 2d 807 (Ala. 1982); *State v. Bankhead Min. Co.*, 279 Ala. 566, 188 So. 2d 527 (1966). Section 40-9-19 of the Code gives the Department of Revenue the authority to promulgate regulations to define and specify the condition or state of health that makes a person "permanently and totally disabled." Any person who is drawing any pension or annuity from the armed services, a private company, or any governmental agency because he or she is permanently and totally disabled is automatically allowed the exemption upon a showing of proof of the same. As for others, proof from two doctors attesting to the fact of permanent or total disability is required. To prove age, the claimant must verify his or her age the first time the exemption is claimed. The definition of blindness is found in section 1-1-3 of the Code and provides as follows:

(a) As used in this Code or any statute of this state heretofore or hereafter enacted, unless the context requires a different meaning, the term "blind person" means a natural person who has no vision or whose vision with correcting glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential, or who has central visual acuity of 20/200 or less in the better eye with correcting glasses, or whose central visual acuity is more than 20/200 in the better eye with correcting glasses but whose peripheral field has contracted to such an extent that the widest diameter of the visual field

subtends an angular distance no greater than 20 degrees.

(b) The condition of blindness may be proved by a blind person claiming any rights or benefits provided under any statute of this state by certificate of a duly licensed ophthalmologist or optometrist.

ALA. CODE § 1-1-3 (1999).

Section 40-7-1, *et seq.*, of the Code of Alabama, the ad valorem tax assessment provisions, provides in section 40-7-10 that once a statutory exemption has been claimed and granted, one is not required to annually make such claim. Sections 40-9-19 and 40-9-21 are statutory homestead exemptions. Section 40-9-21.1 of the Code specifically provides that anyone who qualifies for a homestead exemption pursuant to sections 40-9-19 and 40-9-21 is not required to annually claim the exemption after the initial qualification, but may verify that the conditions still apply thereafter on a form affidavit. This form affidavit does not require proof, only the signature of the affiant verifying that the conditions under which the exemption was granted still exist.

CONCLUSION

There is no income limitation for claiming a homestead exemption for someone who has a permanent and total disability, who is blind as defined by section 1-1-3 of the Code of Alabama, or for someone who is totally disabled as set forth in section 40-9-21 of the Code.


Section 40-9-21.1 of the Code specifically provides that anyone who qualifies for a homestead exemption pursuant to sections 40-9-19 or 40-9-21 is not required to annually claim the exemption after the initial qualification, but may verify that the conditions still apply thereafter on a form affidavit. This form affidavit does not require proof, only the signature of the affiant verifying that the conditions under which the exemption was granted still exist.

Honorable J.T. "Jabo" Waggoner
Page 5

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

Sincerely,

TROY KING
Attorney General
By:

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

BRENDA F. SMITH.
Chief, Opinions Division

TK/GBG/BFS

178613v2/72181