

August 9, 1999

Honorable Kay Bain
Revenue Commissioner
St. Clair County
P.O. Box 340
Pell City, Alabama 35125

St. Clair County - Ad Valorem Tax -
Homestead Exemptions - Fire Protection
Tax – Code Section 40-9-19, as amended.

Taxpayers claiming homestead
exemptions under section 40-9-19 of
the Code of Alabama, as amended, are
exempt from paying the two (2)-mill ad
valorem tax levied in St. Clair County
for fire and rescue purposes.

Dear Ms. Bain:

This opinion is issued in response to your request for an
opinion from the Attorney General.

QUESTION

Whether a taxpayer claiming a
homestead exemption is exempt from
paying the two (2)-mill ad valorem tax
enacted for fire and rescue protection in
St. Clair County.

FACTS AND ANALYSIS

Local Act No. 97-459 proposed an amendment to the Constitution of Alabama to levy an ad valorem tax on all taxable property located in St. Clair County at a rate of two (2) mills per dollar of assessed value of the taxable property for the benefit of an expendable fire protection trust fund for fire and emergency medical services in that county. 1997 Ala. Acts No. 97-459, 810. The voters of St. Clair County approved the amendment on November 3, 1998. This is a local ad valorem tax applying only to St. Clair County. This is not a statewide ad valorem tax.

Your question involves the effect of allowed homestead exemptions on this local ad valorem tax. To restate, if a taxpayer claims the homestead exemption as allowed under the Constitution and laws of the State of Alabama, is that taxpayer exempt from paying the two (2)-mill fire and rescue tax?

Section 40-9-19 of the Code of Alabama sets out the homestead exemptions allowed under Alabama's tax laws. Subsection (a) of section 40-9-19 states that homesteads are exempted from all **state** ad valorem taxes, with certain exceptions not related to local ad valorem taxes. As previously mentioned, the fire and rescue tax in question is a **local** ad valorem tax not falling under the subsection (a) exemption.

Subsection (b) of section 40-9-19 states:

For tax years beginning on and after October 1, 1981, for residents of this state not over 65 years of age, homesteads, as defined by the Constitution and laws of Alabama, are hereby exempted from all ad valorem property taxes levied, except countywide and school district ad valorem taxes levied for school purposes, by any county of this state. In no case shall such exemption herein made apply to more than one person, head of the family, nor shall the said exemption exceed \$2,000 in assessed value, nor 160 acres in area for any resident of this state who is not over 65 years of age except as provided in subsection (c) of this section.

ALA. CODE § 40-9-19(b) (1998) (emphasis added).

The 2-mill fire and rescue tax is a countywide ad valorem tax not levied for school purposes and, as such, it falls under the subsection (b) exemption; therefore, residents not over age 65 are exempt under this section.

Subsection (d) provides an exemption for residents over 65 years of age for homesteads of all ad valorem property taxes whether they are state or county levied if the following conditions are met. It states, in part:

For tax years beginning on and after October 1, 1981, for residents 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, homesteads, as defined in the Constitution and law of Alabama, are hereby exempted from ad valorem property taxes levied by any county of this state, including such taxes levied for school districts. In no case shall such exemption exceed \$5,000 in assessed value, nor 160 acres in area. With respect to homesteads situated in more than one county, the exemption granted herein shall be prorated between the counties in which the homestead is situated in the proportion that the area of the homestead in each county bears to the total area of the homestead claimed for exemption. . . .

ALA. CODE § 40-9-19(d) (1998) (emphasis added).

While your question concerns the applicability of ad valorem tax exemptions to homesteads, section 40-9-21 of the Code of Alabama offers another exemption from ad valorem taxation that concerns residences. It states:

In addition to the persons and property exempt from ad valorem taxation as prescribed in Section 40-9-1, the following shall also be exempt 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 to \$7,500 or less, as shown on such person's and spouse's latest United States income tax return. In the event that such person and spouse are not required to file a United States income tax return, then an affidavit indicating that the net taxable income of such person and spouse for the preceding taxable year was \$7,500 or less shall be sufficient proof. Proof of age shall be furnished when the exemption provided herein is claimed. Proof of total disability may be, but shall not be limited to, the written certification of such total disability by any two physicians licensed to practice in this state. In order to qualify for exemption under this section, such principal residence must be a single-family residence owned and occupied by a person qualifying under this section.

ALA. CODE § 40-9-21 (1998).

Clearly, taxpayers meeting these requirements are also exempt from the 2-mill fire and rescue tax you collect for St. Clair County.

CONCLUSION

Based on the foregoing, it is the opinion of this Office that taxpayers claiming homesteads are exempt from paying the 2-mill fire and rescue ad valorem tax your office administers in St. Clair County.

It should be noted that subsection (e) states that, "The grant of any homestead exemption provided under the provisions of this section shall not be allowed if such grant shall prevent the payment

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of any bonded indebtedness secured by any tax to which the homestead exemption would apply.” ALA. CODE § 40-9-19(e) (1998).

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

Sincerely,

BILL PRYOR
Attorney General
By:

CAROL JEAN SMITH
Chief, Opinions Division

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