Combined homestead exemption

Number: AGO 74-353

Date: November 05, 1998

Subject:
Combined homestead exemption

TAXATION--COMBINED HOMESTEAD EXEMPTIONS MAY NOT EXCEED TEN THOUSAND DOLLARS

To: Lori Wilson, Senator, 16th District, Merritt Island

Prepared by: William R. Cave, Assistant Attorney General, and Daniel C. Brown, Legal Intern

QUESTIONS:

1. May a person who qualifies for the homestead exemption granted in s. 196.031(1) and (3), F. S., as amended by s. 1, Ch. 74-264, Laws of Florida, and also qualifies for one or more of the exemptions granted in s. 196.202, F. S., claim combined exemptions aggregating more than ten thousand dollars?

2. Can the legislature validly grant an additional five thousand dollars homestead exemption pursuant to Art. VII, s. 6(c), State Const., and then in effect reduce the amount of the additional homestead exemption available to those persons whose combined homestead exemptions and the exemptions granted in s. 196.202, F. S., would exceed ten thousand dollars if granted?

SUMMARY:

A person entitled to the homestead exemption granted pursuant to s. 196.031(1), F. S., and the additional homestead exemption granted pursuant to s. 196.031(3)(a) and (b), as amended by s. 1, Ch. 74-264, Laws of Florida, and one or more of the exemptions granted pursuant to s. 196.202, F. S., may not claim combined exemptions under these sections aggregating more than ten thousand dollars.

Your first question is answered in the negative, and the second question is answered as discussed hereinafter.

Article VII, s. 3(b), State Const., in pertinent part provides:

"There shall be exempt from taxation, cumulatively, . . . to every widow, or person who is blind or totally and permanently disabled, property to the value fixed by general law not less than five hundred dollars."

Article VII, s. 6(c), State Const., provides that the homestead exemption may be increased by general law, *subject to conditions specified therein*, up to an amount not exceeding ten thousand

dollars of the assessed value of real property if the owner has attained the age of sixty-five or is totally and permanently disabled.

Section 196.202, F. S., implements Article VII, s. 3(b), *supra*, and exempts from ad valorem taxation property to the value of five hundred dollars of ". . . every widow, blind person, or totally and permanently disabled person who is a bona fide resident of this state. . . ."

Section 1[s. 196.031(3)(a), F. S.], Ch. 74-264, Laws of Florida, increases the *homestead* exemption granted by s. 196.031(1), F. S., to ten thousand dollars for every person who qualifies for the homestead exemption provided for in s. 196.031(1) and who has been a permanent resident of this state for five consecutive years prior to claiming the exemption and who is sixty-five years of age or older.

Section 1[s. 196.031(3)(b), F. S.] Ch. 74-264, Laws of Florida, provides for the homestead exemption granted in s. 196.031(1), F. S., to be increased forty-five hundred dollars for every person who, in addition to qualifying pursuant to s. 196.031(1), has been a resident of this state for five consecutive years prior to claiming the exemption and qualifies for the exemption granted pursuant to s. 196.202, *supra*, as a totally and permanently disabled person. This additional forty-five hundred dollars is to be combined with the five hundred dollar exemption granted in s. 196.202 to make a total exemption of ten thousand dollars.

However, in the event that a person qualifies for the additional homestead exemption provided for in subsection 196.031(3)(a) or (b), *supra*, and for one or more of the exemptions provided for in s. 196.202, *supra*, s. 1[s. 196.031(3)(c), F. S.], Ch. 74-264, Laws of Florida, provides:

"No homestead shall be exempted under both paragraphs (a) and (b) of this subsection. In no event shall the combined exemptions of s. 196.202 and this section exceed ten thousand dollars ($10,000)."

The legal effect of this provision is to restrict the amount of additional homestead exemption for the aged and the disabled to that amount which, together with the applicant's personal exemptions and basic five thousand dollar homestead exemption, will not exceed ten thousand dollars. However, it is the additional homestead exemption that is reduced by the amount of such personal exemption or exemptions as the applicant may be eligible for and granted by the taxing officials, pursuant to ss. 196.24 and 196.202, F. S. *See also* AGO 074-325. I therefore am of the opinion that the homestead exemptions provided for in s. 196.031(1) and (3), F. S., as amended by s. 1, Ch. 74-264, *supra*, combined with one or more of the exemptions provided for in s. 196.202, cannot exceed ten thousand dollars.

Your second question seeks an opinion as to the constitutionality of s. 1, Ch. 74-264, *supra*, which amends s. 196.031(3), F. S., so as to grant an additional five thousand dollar homestead exemption to five-year residents of the state who are sixty-five years old or older and to grant an additional forty-five hundred dollar homestead exemption to five-year residents of this state who qualify for the exemption granted pursuant to s. 196.202, supra, as a totally and permanently disabled person, as hereinabove discussed. As stated by the Florida court, "[i]t is also settled in this and other jurisdictions that a statute found on statute books must be presumed to be valid and must be given effect until it is judicially declared unconstitutional." Evans *et ux*. v.

Hillsborough County, 186 So. 193, 196 (Fla. 1938).