Homestead, employment outside of state

Number: INFORMAL

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The Honorable V. Frank Desguin
Charlotte County Property Appraiser
18500 Murdock Circle
Port Charlotte, Florida 33948-1076

Dear Mr. Desguin:

This is in response to your recent request for assistance in determining whether full-time employment outside the state of Florida would disqualify an individual from claiming homestead, when documentation of Florida residency has been provided.

Initially, I would note that this office may not resolve questions of fact or mixed questions of law and fact. To be of assistance, however, the following general comments are offered.

Article VII, section 6(a), Florida Constitution, authorizes a homestead exemption from taxation for "[e]very person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner . . . ." The constitutional provision does not establish an absolute right to a homestead exemption; rather, the exemption may be granted to an applicant only "upon establishment of right thereto in the manner prescribed by law."[1] However, interpretations of the homestead exemptions under Florida law are entitled to consideration in the "liberal and beneficent spirit in which they were enacted to protect the family home."[2]

Section 196.031, Florida Statutes, which substantially tracks the language of and implements the constitutional provision states:

"(1) Every person who, on January 1, has the legal title or beneficial title in equity to real property in this state and who resides thereon and in good faith makes the same his or her permanent residence, or the permanent residence of another or others legally or naturally dependent upon such person, is entitled to an exemption from all taxation, except for assessments for special benefits, up to the assessed valuation of [$25,000] on the residence and contiguous real property, as defined in s. 6, Art. VII of the State Constitution. . . ."[3]

Based on the use of the conjunctive "and" in section 196.031(1), Florida, Statutes, it would appear entitlement to Florida's homestead exemption from taxation is determined by the simultaneous existence of three factors on January 1 of the tax year: 1) possession of legal or equitable title to the property, and 2) residence on the property, and 3) the intention of the taxpayer to make the property their permanent residence.[4] Further, the administrative rule adopted by the Department of Revenue to implement section 196.031, Florida Statutes, provides:

"(1) For one to make a certain parcel of land his permanent home, he must reside thereon with a present intention of living there indefinitely and with no present intention of moving therefrom.(2) A property owner who, in good faith, makes real property in this state his permanent home is entitled to homestead tax exemption[.]"[5]

Considering the constitutional provision, the statute, and the administrative rule set out above, this office in Attorney General's Opinion 79-50 concluded that "[i]t is necessary for all persons, including military personnel, who own real property, or those persons who are legally or naturally dependent upon such owners, to occupy the real property as a permanent home or place of residence in order for the owner thereof to be entitled to the constitutional homestead exemption from taxation." As this office noted in that opinion, the language of Article VII, section 6, Florida Constitution, makes occupancy essential to the establishment of a homestead and entitlement to a homestead tax exemption.

Section 196.015, Florida Statutes, states:

"Intention to establish a permanent residence in this state is a factual determination to be made, in the first instance, by the property appraiser. Although *any one factor is not conclusive of the establishment or non-establishment of permanent residence*, the following are relevant factors that may be considered by the property appraiser in making his or her determination as to the intent of a person claiming a homestead exemption to establish a permanent residence in this state:

(1) Formal declarations of the applicant.
(2) Informal statements of the applicant.
(3) The place of employment of the applicant.
(4) The previous permanent residency by the applicant in a state other than Florida or in another country and the date non-Florida residency was terminated.
(5) The place where the applicant is registered to vote.
(6) The place of issuance of a driver’s license to the applicant.
(7) The place of issuance of a license tag on any motor vehicle owned by the applicant.
(8) The address as listed on federal income tax returns filed by the applicant." (e.s.)

Consistent with the statutory direction that no single factor is determinative in establishing permanent residence for purposes of claiming homestead, this office in Attorney General Opinion 76-177 found that rental of an apartment in an adjoining county in pursuit of employment did not constitute abandonment of homestead, when the taxpayer returned on the weekends to the alleged homestead which was not rented and which was the sole property owned by the taxpayer. It was concluded that temporary absence from the homestead by itself does not constitute abandonment, but may be considered, in conjunction with all other available evidence, in determining whether abandonment of the homestead has occurred.[6]

Ultimately, as noted above, it is the property appraiser who must determine an applicant’s entitlement to a homestead exemption from an objective evaluation of the surrounding facts and circumstances; this office has no authority to interject itself into the process.

I trust that these informal comments will assist you in resolving this matter.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] *Horne v. Markham*, 288 So. 2d 196, 199 (Fla. 1973).

[2] *See, e.g.*, Op. Att'y Gen. Fla. 71-398 (1971); and *cf., In re: Estate of Skuro*, 467 So. 2d 1098 (Fla. 4th DCA 1985), *aff'd*, 487 So. 2d 1065 (Fla. 1986) and *Cain v. Cain*, 549 So. 2d 1161 (Fla. 4th DCA 1989) (homestead exemption is to be construed liberally for benefit of those whom it is designed to protect).

[3] See s. 196.031(3)(e), Fla. Stat., changing the assessed valuation from $5,000 to $25,000 for levies of taxing authorities other than school districts.

[4] *See* s. 196.015, Fla. Stat., setting forth relevant factors that may be considered by the property appraiser in making his or her determination regarding the establishment of permanent residency in this state.

[5] Rule 12D-7.007, Florida Administrative Code.

[6] *And see* Op. Att'y Gen. Fla. 74-115 (1974) ("[B]oth military personnel and civilians must satisfy the permanent residence requirement of the Constitution and statutes before a homestead exemption may properly be granted. An exception is provided by ss. 196.061 and 196.071, F.S., so that military personnel who have qualified for Florida's homestead tax exemption but later transfer their residence temporarily to another location because of their military duties will not lose their Florida homestead tax exemption.")