

Property Appraiser, senior homestead exemption

Number: INFORMAL

Date: March 30, 2005

The Honorable Ronald W. Kilgore
Wakulla County Property Appraiser
Post Office Box 26
Crawfordville, Florida 32326-0026

Dear Mr. Kilgore:

You ask whether the property appraiser may grant the additional homestead exemption for seniors with limited incomes under Article VII, section 6(f), Florida Constitution, and section 196.075, Florida Statutes, if an elderly person is unable to provide proof of income.

You state that an elderly resident of your county has applied for a senior exemption in addition to the \$25,000 homestead exemption. While the person was able to provide proof of age, the individual was not able to provide proof of income. Thus, your office is unable to determine whether the person meets the income limitation requirements.

During the November 1998 general election, the electors of this state approved Amendment 3 to the Florida Constitution. The amendment created Article VII, section 6(f), Florida Constitution, authorizing the Legislature to allow counties and municipalities to grant an additional homestead tax exemption not exceeding \$25,000 to certain persons 65 years of age or older whose household income does not exceed a specified amount.[1]

During the 1999 legislative session, the Legislature adopted section 196.075, Florida Statutes, to implement the above constitutional amendment. The statute allows the board of county commissioners of any county or the governing authority of any municipality to grant an additional homestead exemption of up to \$25,000 to resident homeowners who have legal or equitable title to the real estate, who are at least 65 years of age, and whose household income does not exceed a specified amount.[2] Those persons entitled to the homestead exemption in section 196.031, Florida Statutes, may apply for and receive an additional homestead exemption as provided in section 196.075, Florida Statutes.[3] The exemption applies only to taxes levied by the unit of government granting the exemption.[4] It should be further noted that the constitution and statute limit household income; thus, the limitation of income requires that the cumulative adjusted income of all persons living within the qualifying homestead does not exceed the maximum household adjusted income.[5]

Section 196.075(4)(d), Florida Statutes, provides that an ordinance granting additional homestead exemption as authorized by this section must "require that a taxpayer claiming the exemption annually submit to the property appraiser, not later than March 1, a sworn statement of household income on a form prescribed by the Department of Revenue." In addition, the department

"must require by rule that the filing of the statement be supported by copies of any federal income tax returns for the prior year, any wage and earnings statements (W-2 forms), any request for an extension of time to file returns, and any other documents it finds necessary, for each member of the household, to be submitted for inspection by the property appraiser. The taxpayer's sworn statement shall attest to the accuracy of the documents and grant permission to allow review of the documents if requested by the property appraiser. Submission of supporting documentation is not required for the renewal of an exemption under this section unless the property appraiser requests such documentation. Once the documents have been inspected by the property appraiser, they shall be returned to the taxpayer or otherwise destroyed. The property appraiser is authorized to generate random audits of the taxpayers' sworn statements to ensure the accuracy of the household income reported. If so selected for audit, a taxpayer shall execute Internal Revenue Service Form 8821 or 4506, which authorizes the Internal Revenue Service to release tax information to the property appraiser's office. All reviews conducted in accordance with this section shall be completed on or before June 1. *The property appraiser may not grant or renew the exemption if the required documentation requested is not provided.*"[6] (e.s.)

Rule 12D-7.0143, Florida Administrative Code, adopted by the Department of Revenue, seeks to implement the statutory mandate. Subsection (2) of the rule provides:

"A taxpayer claiming the additional exemption is required to submit a sworn statement of adjusted gross income of the household (Form DR-501SC, Sworn Statement of Adjusted Gross Income of Household and Return, incorporated by reference in Rule 12D-16.002, F.A.C.) to the property appraiser by March 1, comprising a confidential return of household income for the specified applicant and property. The sworn statement must be supported by copies of the following documents to be submitted for inspection by the property appraiser:

- (a) federal income tax returns for the prior year for each member of the household, which shall include the federal income tax returns 1040, 1040A, and 1040EZ, if any; and
- (b) any request for an extension of time to file federal income tax returns; and
- (c) any wage earning statements for each member of the household, which shall include Forms W-2, RRB-1042S, SSA-1042S, 1099, 1999A, RRB 1099 and SSA-1099, if any."

Department of Revenue form DR 501SC, entitled "Sworn Statement of Adjusted Gross Income of Household and Return, Senior Citizen Exemption for Persons Age 65 and Over," provides in Part B that if the persons seeking the exemption do not file a Federal Income Tax Return Form 1040, they agree

"to submit Social Security Statement (SSA 1099) before June 1; and I (we) attach IRS Form 4506, Request for Copy or Transcript of Tax Form, to prove household members are not required to file tax return with IRS."

When a person does not file an IRS return, Part E, Statement of Income, must be completed for all members living in the household. Part C of the form applies when the applicant does file a federal income tax return form 1040 series and provides that a copy of such return be submitted. Part D of the form provides authorization for the Property Appraiser's Office to obtain information from utility companies and other sources necessary to determine the applicant's continuing eligibility. The DR 501SC form recognizes that supporting documentation need not be submitted

if the applicant is filing for renewal of the additional homestead exemption unless requested by the property appraiser. The form defines "Supporting documentation" as including:

"rental receipts, pension statements, annuity statements, income statements, interest statements, and any Wage and Earning Statements; Form W series forms, Form 1099 series forms, Form 1042 series forms, Form 1065 series forms, Social Security Benefits Worksheets, etc., and/or Form 4506, or any other documentation supporting the applicant's household income."

Thus, Article VII, section 6(f), Florida Constitution, and section 196.075, Florida Statutes, limit the eligibility for the extra homestead exemption to seniors whose household income does not exceed a specified amount.[8]

The Department of Revenue, is charged with adopting the rules and forms implementing section 196.075, Florida Statutes. Therefore, in determining what type of documentation is required to prove income eligibility, you should coordinate with that department.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tfl

[1] Article VII, s. 6(f), Fla. Const., provides:

"The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant an additional homestead tax exemption not exceeding twenty-five thousand dollars to any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner and *who has attained age sixty-five and whose household income, as defined by general law, does not exceed twenty thousand dollars.* The general law must allow counties and municipalities to grant this additional exemption, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the *periodic adjustment of the income limitation prescribed in this subsection for changes in the cost of living* ." (e.s.)

[2] Initially, household income could not exceed \$20,000. See s. 196.075(2), Fla. Stat. However, s. 196.075(3), Fla. Stat., provides that:

"Beginning January 1, 2001, the \$20,000 income limitation shall be adjusted annually, on January 1, by the percentage change in the average cost-of-living index in the period January 1 through December 31 of the immediate prior year compared with the same period for the year prior to that. The index is the average of the monthly consumer-price-index figures for the stated 12-month period, relative to the United States as a whole, issued by the United States

Department of Labor."

And see s. 196.075(1)(b), Fla. Stat., defining "Household income" to mean "the adjusted gross income, as defined in s. 62 of the United States Internal Revenue Code, of all members of a household."

[3] *See*, s. 196.031(1), Fla. Stat., providing an exemption for persons who, on January 1, have the legal title or beneficial title in equity to real property in this state and who reside thereon and in good faith make the same their permanent residence.

[4] Section 196.075 (4)(b), Fla. Stat., which also states that "[u]nless otherwise specified by the county or municipality, this exemption will apply to all tax levies of the county or municipality granting the exemption, including dependent special districts and municipal service taxing units."

[5] *See* s. 196.075(1)(a) and (b), Fla. Stat., defining "Household" and "Household income" respectively.

[6] Section 196.075(5), Fla. Stat.

[7] *See* Part C of DR 501SC, "Sworn Statement of Adjusted Gross Income of Household and Return, Senior Citizen Exemption for Persons Age 65 and Over," stating:

"Yes, I (we) file Federal Income Tax Return Form 1040 series. I (we) agree to submit a copy of Form 1040 or Form 4868, Application for Automatic Extension of Time to File U.S. Individual Tax Return, if applicable, and the Wage and Tax Statement (W-2 Form) for review by the Property Appraiser. Attach prior year federal income tax return(s) and Wage and Tax Statement(s) (W-2) for all persons listed above. Prior year's IRS Form or Form 4868 should be submitted by May 1 for prompt consideration and no further documentation will be accepted after June 1."

[8] *Cf. Zingale v. Powell*, 885 So. 2d 277 (Fla. 2004) (although taxpayers have a right to the constitutional cap in the Save Our Homes Amendment, the right is not self-executing); *State ex rel. Szabo Food Services, Inc. of North Carolina v. Dickinson*, 286 So. 2d 529 (Fla. 1973).