

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

April 19, 2019

Tom T. Ross, Jr., Esquire
Coahoma County Board of Supervisors
Post Office Box 579
Clarksdale, Mississippi 38614-0579

Re: Reinstatement of Homestead Exemption for Ad Valorem Taxes

Dear Mr. Ross:

Attorney General Jim Hood is in receipt of your opinion request and has assigned it to me for research and reply.

Facts

In your letter, you explain that the taxpayer in question (hereinafter "wife") has owned and resided at a property since 2008. Prior to 2018, she owned the property jointly with her now ex-husband. The ex-husband was listed as the primary taxpayer (owner) on the homestead application. In August 2018, pursuant to a divorce decree, the wife received a quitclaim deed from her ex-husband conveying the property solely to her. In February of 2019, when she paid the 2018 taxes on the property, she was notified of a 2017 homestead exemption "charge-back" due to the ex-husband being unqualified for the exemption. Your letter also provides that the wife's name was also on the homestead application and that the property has consistently been her primary residence. The wife has explained to the Board of Supervisors that she did not have the legal authority to remove her husband's name from the homestead exemption application paperwork until August 2018. The applicant has been advised by the tax assessor that a charge-back will also be issued for 2018. The applicant has requested the Board of Supervisors to amend the homestead exemption roll for the years 2017 and 2018 and reinstate the exemption.

Question Presented

Does the Board of Supervisors have the authority to amend the homestead exemption rolls for the years 2017 and 2018 and grant the requested homestead exemptions and issue a refund of the ad valorem taxes paid?

Response

No. The wife may not receive a homestead exemption for the years 2017 and 2018 where she failed to file a new application for homestead exemption as required by Section 27-33-31(1) of the Mississippi Code Annotated on or before April 1, 2018, for the 2017 tax year or April 1, 2019, for the 2018 tax year. Her failure to file the required applications for 2017 and 2018 prohibits the Board of Supervisors from granting homestead exemption to the subject property.

Legal Analysis

Section 27-33-31(1)(a) of the Mississippi Code Annotated provides, in pertinent part:

It shall be the duty of every person, who is eligible for and desires the homestead exemption provided for in this article, to comply with the following provisions:

(a) He shall make written application to the county tax assessor on the prescribed form, on or before the first day of April. Applications not on file on or before April 1 of the current year may not be filed, may not be dated back, may not be accepted by the assessor, may not be allowed by the board of supervisors, and may not be considered by the commission, excepting as provided in paragraph (b) of this section....

In the event changes have occurred in the status of the homestead in the property description, ownership, use or occupancy since January 1 of the preceding year, and in the event such person is still eligible for homestead exemption, he shall file a new application and provide all the information required under this section as for the initial application on or before April 1 of the current year.

See MS AG Op., Montgomery (March 28, 2014).

This statute mandates that when there is a change in ownership since January 1 of the preceding year, the homeowner has a duty to return the annual renewal application to the tax assessor on or before April 1 of the current year and to file a new application. The facts in your request state that the ex-husband had applied for and received homestead exemption on the property since 2008. He was still the primary homestead applicant in 2017 when a determination was made that he no longer qualified for the homestead exemption. We assume, although it is not stated in the request, that the wife did not file a new application by April 1, 2018, as would be required by Section 27-33-31.

In August 2018, there was a change in ownership of the property when the ex-husband quitclaimed the property to the wife. This was a change in the ownership of the property,

Tom T. Ross, Jr., Esquire
April 19, 2019
Page 3

which required the wife to file a new application for homestead exemption with the tax assessor on or before April 1, 2019. Again, we assume no such filing was made. MS AG Op., Montgomery (March 28, 2014); MS AG Op., Espy (March 8, 2013); MS AG Op., Welch (April 6, 1994). Her failure to file the required applications for 2017 and 2018 prohibits the Board of Supervisors from granting homestead exemption to the subject property.

In your letter, you mention a previous opinion in which our office opined that "the County is authorized to refund ad valorem taxes paid as a result of the tax assessor erroneously taking the property off the homestead exemption roll. The board of supervisors must make a factual finding by order on the minutes that the taxpayer was entitled to the refund due to the fact that he/she was eligible for a homestead exemption and that the tax assessor erroneously removed the property from the homestead exemption rolls. Such refunds are subject to the three-year statute of limitations." MS AG Op., Nowak (July 28, 2017). The facts of the Nowak opinion are distinctly different from yours. In that opinion, the exemption applicant had died, and the surviving spouse did not appear before the tax assessor with verification that he/she remained eligible for the homestead exemption originally granted on the property until over a year later. In those instances, Section 27-33-31(1) provides that the requirement to file a new application does not apply to a surviving spouse who is still eligible for homestead exemption.¹ Our office opined in the Nowak opinion that the Legislature intended to exclude a date requirement to amend a homestead application in circumstances where there is a change in ownership due to the death of an owner when the surviving spouse is still eligible for the homestead exemption.

Conclusion

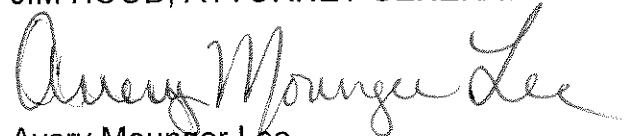
We opine that the Board of Supervisors may not, under the factual scenario described in the request letter, amend the homestead tax rolls and allow a homestead exemption for the years 2017 and 2018 for a taxpayer who fails to comply with the mandatory application provisions of Section 27-33-31(1).

If this office may be of any further assistance to you, please let us know.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Avery Mounger Lee
Special Assistant Attorney General

¹ Section 27-33-33(2)(c) also authorizes the tax assessor to amend the application in such instances.