January 26, 2012
OPINION 11-0211

125 TAXATION – Homestead Exemption
La. Const. art. VII, §20(A)(2)

The determination as to whether a property owner's homestead exemption should be removed while he is incarcerated must be made in light of all the facts and circumstances. The length of time an owner is away from his homestead is but one factor to be considered when determining whether a homestead is occupied for purposes of La. Const. art. VII, §20(A)(2).

Honorable Patricia Schwarz Core
St. Tammany Parish Assessor
701 North Columbia St.
Covington, LA 70433

Dear Ms. Core:

Your request for an Attorney General's Opinion as to whether a property owner's homestead exemption should be removed while he is incarcerated has been assigned to me for research and reply.

Article VII, Section 20(A)(1), of the Louisiana Constitution of 1974 (the "homestead exemption") provides as follows:

> The bona fide homestead, consisting of a tract of land or two or more tracts of land even if the land is classified and assessed at use value pursuant to Article VII, Section 18(C) of this constitution, with a residence on one tract and a field with or without timber on it, pasture, or garden on the other tract or tracts, not exceeding one hundred sixty acres, buildings and appurtenances, whether rural or urban, owned and *occupied* by any person or persons owning the property in indivision, shall be exempt from state, parish, and special ad valorem taxes to the extent of seven thousand five hundred dollars of the assessed valuation. [Emphasis added.]

Since the owner will be incarcerated, the ultimate issue is whether he occupies such property. Significantly, the term occupied for the purposes of the homestead exemption is not defined.

The determination of whether property is subject to an ad valorem tax exemption is a factual one that is the responsibility of the various tax assessors, subject to review by the Tax Commission, and ultimately the courts.[1] Nevertheless, in Atty. Gen. Opin. No. 96-99, we provided the following summary to guide fact finders in determining whether a homestead is considered occupied for purposes of the homestead exemption:

---

[1] La. Const. art. VII, §18; La. R.S. 47:1952.

> The property claimed as a homestead must be actually occupied as a residence by the owner claiming the exemption. Brantley v. Pruitt, 175 La. 879, 144 So. 604 (La. 1932); Op. Atty. Gen. 1940-42, p. 4117. Once the homestead character attaches to the property, continuous and actual occupancy of the property claimed is unnecessary as a taxpayer does not lose the exemption by temporary absence. Op. Atty. Gen. 1948-50, p. 729. Attorney General opinions have found this to be the case where a person while living away returns to occupy the property regularly and does not rent the property to another; and where a person is required to live away from home and allows relatives to occupy the property rent free. Op. Atty. Gen. 1936-38, p. 1054; Op. Atty. Gen. 1940-42, p. 4088. If, however, the owner who claims the homestead never intends to return, even for any element of time in the future to occupy the residence as his home, then the owner would not be entitled to the homestead exemption. Op. Atty. Gen. 84-1058. What is essential is that the homestead remain available for occupancy by its owner at all times, and that the owner intends to return to the homestead and again occupy it as his home. Op. Atty. Gen. 84-1058, Op. Atty. Gen. 77-470.

In conclusion, the determination as to whether a property owner's homestead exemption should be removed while he is incarcerated for ten years must be made in light of all the facts and circumstances. As we opined in Atty. Gen. Op. No. 96-99, the length of time an owner is away from his homestead is but one factor to be considered when determining whether a homestead is occupied for purposes of La. Const. art. VII, §20(A)(2).

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

JAMES D. "BUDDY" CALDWELL
Attorney General

By: _____
BENJAMIN A. HUXEN II
Assistant Attorney General

JDC/BAH II

Opinion 11-0211
Syllabus

125 TAXATION – Homestead Exemption
La. Const. art. VII, §20(A)(2)

The determination as to whether a property owner's homestead exemption should be removed while he is incarcerated must be made in light of all the facts and circumstances. The length of time an owner is away from his homestead is but one factor to be considered when determining whether a homestead is occupied for purposes of La. Const. art. VII, §20(A)(2).

Honorable Patricia Schwarz Core
St. Tammany Parish Assessor
701 North Columbia St.
Covington, LA 70433

Date Received:

Date Released: January 26, 2012

Benjamin A. Huxen II
Assistant Attorney General