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ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
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JAN 17 2014
OPINION 13-0215

Mr. James J. Petitjean, CLA
Acadia Parish Assessor
P. O. Box 1329
Crowley, Louisiana 70527

Dear Mr. Petitjean:

125 - TAXATION – Homestead exemption
La. Const. art. VII, § 21

A bona fide homestead under La. Const. art. VII, § 20(A)(1) is not eligible for the homestead exemption if an LLC owns such homestead subject to a usufruct in favor of a natural person who owned the homestead immediately prior to the granting of such usufruct, qualified for the homestead exemption before the transfer, and continues to occupy the residence on the homestead.

Your request for an Attorney General's opinion has been assigned to me for research and reply. You ask whether a bona fide homestead under La. Const. art. VII, § 20(A)(1) is eligible for the homestead exemption under the following circumstances:

1. the bona fide homestead in question was transferred by the immediate prior owner to multiple natural persons;
2. the immediate prior owner is a natural person who retained a usufruct over the property after the transfer, qualified for the homestead exemption before the transfer, and continues to occupy the residence; and
3. the multiple natural persons subsequently transferred their naked ownership of the bona fide homestead to a limited liability company ("LLC").

First, we note that the authority to determine whether a particular taxpayer may be exempt from the payment of *ad valorem* taxes is a factual determination exclusively reserved by the Louisiana Constitution and state law to the assessor, subject to the review of the Louisiana Tax Commission and, ultimately, the courts.¹ While the Attorney General does not have the authority to determine whether a particular taxpayer's property is exempt from taxation, we direct your attention to the applicable law that may be used in making your determination.

The first and foremost principle in a tax exemption case is that an exemption, being an exceptional privilege, must be expressly and clearly conferred in plain terms.² Exemption provisions are strictly construed against the taxpayer claiming the benefit of

¹ La. Atty. Gen. Op. Nos. 01-144, 00-54, 96-438, and 94-603.

² *Showboat Star Partnership v. Slaughter*, 00-1227, p.10 (La.4/3/01), 789 So.2d 554, -560; *McNamara v. Central Marine Service, Inc.*, 507 So.2d 207, 208 (La.1987).

an exemption and must be unequivocally and affirmatively established by the taxpayer.³ The taxpayer's stringent burden is to overcome the judicial maxim that "to doubt is to deny the exemption."⁴

The homestead exemption requirements are set forth in La. Const. art. VII, § 20(A), which provides, in pertinent part, as follows:

(1) 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. The same homestead exemption shall also fully apply to the primary residence, including a mobile home, which serves as a bona fide home and which is owned and occupied by any person or persons owning the property in indivision, regardless of whether the homeowner owns the land upon which the home or mobile home is sited; however, this homestead exemption shall not apply to the land upon which such primary residence is sited if the homeowner does not own the land.

* * *

(4) The homestead exemption shall extend to property where the usufruct of the property has been granted to no more than two usufructuaries who were the immediate prior owners of the homestead and the homestead is occupied as such by a usufructuary. The provisions of this Subparagraph shall apply only to property which qualified for the homestead exemption immediately prior to the granting of such usufruct, or which would have qualified for the homestead exemption if such usufruct had not been granted.

(5) The homestead exemption shall extend only to a natural person or persons and to a trust created by a natural person or persons, in which the

³ *Archer Daniels Midland Company v. Parish School Board of the Parish of St. Charles*, 01-0511, p. 11 (La.11/28/01), 802 So.2d 1270, 1278; *Showboat*, 00-1227 at 10, 789 So.2d at 560.

⁴ *Sherwood Forest Country Club v. Litchfield*, 2008-0194, p. 6 (La. 12/19/08), 998 So.2d 56, 61, citing *Citifinancial Retail Services Division of Citicorp Trust Bank, FSB v. Weiss*, 372 Ark. 128, 271 S.W.3d 494 (2008).

beneficiaries of the trust are a natural person or persons provided that the provisions of this Paragraph are otherwise satisfied.

Here, the issue is that the usufructuary occupies the homestead but no longer owns it.⁵ Generally, the ownership issue would not be a problem under La. Const. art. VII, § 20(A)(4), since the usufruct of the property has been granted to one usufructuary who was the immediate prior owner of the homestead, the homestead is occupied as such by the usufructuary, and the property qualified for the homestead exemption immediately prior to the granting of such usufruct.

However, La. Const. art. VII, § 20(A)(5) expressly provides that the homestead exemption shall extend only to a natural person and certain trusts. Since the current instance does not involve a trust, to qualify for the homestead exemption, the naked owner can only be natural persons, which are human beings.⁶ An LLC is an entity to which the law attributes personality. Therefore, it is a juridical person.⁷

Considering the forgoing constitutional, codal, and jurisprudential authority, it is the opinion of this office that a bona fide homestead under La. Const. art. VII, § 20(A)(1) is not eligible for the homestead exemption if an LLC owns such homestead subject to a usufruct in favor of a natural person who owned the homestead immediately prior to the granting of such usufruct, qualified for the homestead exemption before the transfer, and continues to occupy the residence on the homestead.⁸

Finally, we note that the homestead exemption might be restored if the LLC transfers naked ownership back to a natural person or persons, including the usufructary.

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,

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By:



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⁵ Under La. Civ. Code art. 535, usufruct is a real right of limited duration on the property of another.

⁶ La. Civ. Code art. 24.

⁷ *Id.*

⁸ In accord is La. Atty. Gen. Op. No. 13-0110.