



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

DEC 04 2015
OPINION 15-0123

Michael W. Neustrom
Sheriff, Lafayette Parish
P.O. Box 52269
Lafayette, LA 70505

125 TAXATION – Homestead Exemption
La. R.S. 47:1703
La. R.S. 47:1703.1
La. R.S. 47:1966

If it is determined that, in previous years, a homestead exemption was improperly claimed or otherwise erroneously attributed to property that was not eligible for the homestead exemption, back taxes for up to three previous years must be collected, in accordance La. R.S. 47:1966.

Dear Sheriff Neustrom:

You have requested an opinion related to the retroactive collection of ad valorem property taxes based on an invalid homestead exemption. Specifically, your request indicates that the Lafayette Parish Sheriff's Office ("Sheriff's Office"), as the Ex-Officio Tax Collector for Lafayette Parish, has been requested to send and collect retroactive property tax bills to certain property owners whose homestead exemption was subsequently revoked by the Lafayette Parish Assessor. Your request indicates that some questions have arisen as to the ability of the Sheriff's Office to undertake the procedure to collect such retroactive taxes that had been previously assessed with, at that time, an assessor approved homestead exemption. Specifically, your request notes that previous La. Atty. Gen. Op. No. 11-0233 appears to authorize such an action. However, you ask for clarification of La. Atty. Gen. Op. No. 11-0233 due to your concerns that the collection of back taxes due to an improperly qualified homestead exemption may not be authorized.

In La. Atty. Gen. Op. No. 11-0233, this office was asked about the prescriptive period for collecting back ad valorem taxes due from a taxpayer fraudulently claiming a homestead exemption. In that opinion, we stated that if an assessor discovers a property for which the homestead exemption was erroneously claimed or improperly recognized, the assessor has an obligation to correct the tax roll by removing the exemption, in accordance with La. R.S. 47:1966. This office concluded that La. R.S. 47:1966(A) requires the assessor to seek back taxes for the current tax year and up to three years of back taxes in instances where an assessor determines that a taxpayer fraudulently claimed a homestead exemption. In addition to the pursuit of back taxes for the three previous years, the taxpayer may be prosecuted for improperly claiming a homestead exemption under La. R.S. 47:1703(C).

The statutory provisions relevant to La. Atty. Gen. Op. No. 11-0233 and your request are La. R.S. 47:1966(A)(1) and La. R.S. 47:1703.1(B). La. R.S. 47:1966(A)(1), in relevant part, states:

If any tract or lot of land or other property shall be omitted in the assessment of any year or series of years, or in any way erroneously assessed, it, when discovered, shall be assessed by the assessor or tax collector for the whole period during which the property may have been omitted or improperly assessed, and shall be subject to the state, parish, municipal, and levee taxes, which have been or may hereafter be assessed against the property in accordance with law. No back taxes for more than three years shall be assessed against omitted or improperly assessed property. Assessments of omitted or improperly assessed property shall appear upon a supplemental roll and be filed in the same manner as regular tax rolls...

La. R.S. 47:1703.1(B), states, in relevant part, as follows:

...Any person who fails to notify the assessor in writing that the property upon which he has claimed a homestead exemption under this Section no longer qualifies for that exemption, within sixty days after the disqualification occurs, shall be guilty of a misdemeanor and upon conviction the offender shall be punishable by a fine of not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment for not less than one month nor more than six months, or both.

According to your request, you have concerns that the laws covering "assessment of property," which encompasses La. R.S. 47:1966, is separate from the laws covering "exemption" of property, which encompasses La. R.S. 47:1703.1. In your request, you stated that a taxpayer could possibly claim that the penalty clause in La. R.S. 47:1703.1(B) is the exclusive remedy for violation of the statute, and that the ability to pursue back taxes for an improper homestead exemption would not apply. You have also expressed concern that a taxpayer might claim that the homestead exemption is not an assessment, per se, for purposes of being an erroneous or improper assessment under La. R.S. 47:1966(A)(1), and thus, back taxes could not be sought for an improper homestead exemption.

While it is possible that taxpayers challenging the collection of back taxes due to an improper homestead exemption may raise those defenses, there appears to be nothing contained in the law related to ad valorem property taxes or the jurisprudence interpreting that law that would support such a position. Accordingly, we do not believe that they warrant a reconsideration of the conclusion reached in La. Atty. Gen. Op. No. 11-0233.

First, nothing in La. R.S. 47:1703.1, nor in any other law related to assessments or exemptions, provides that the penalty in La. R.S. 47:1703.1 is the exclusive remedy for addressing homestead exemptions improperly or erroneously applied to property. La. R.S. 47:1703.1 provides a penalty for a taxpayer failing to properly notify the assessor of the expiration of a homestead exemption. The provisions of La. R.S. 47:1966(A)(1), unlike La. R.S. 47:1703.1, apply to the collection of back taxes on property that is in any way erroneously or improperly assessed. Accordingly, we do not believe that the provisions of La. R.S. 47:1703.1 can apply to exclude the application of La. R.S. 47:1966(A)(1).

Additionally, nothing in the laws related to ad valorem property taxes nor in the jurisprudence interpreting them indicates that an improperly or erroneously placed homestead exemption does not qualify as an improper or erroneous assessment for the purposes of collecting back taxes under La. R.S. 47:1966. It is our understanding that tax assessment rolls contain a listing of the property as either being covered or not covered by the homestead exemption, and thus, it appears as though the inclusion or non-inclusion of the homestead exemption would qualify as an assessment for purposes of La. R.S. 47:1966. Further, in La. Atty. Gen. Op. Nos. 11-0233 and 11-0139A, this office concluded that back taxes for the three previous years must be collected pursuant to La. R.S. 47:1966(A)(1) on properties where an improper or erroneous homestead exemption was placed on the tax rolls.

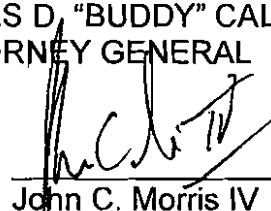
Considering the foregoing, it is the opinion of this office that back taxes accruing due to the correction of an improper or erroneous homestead exemption must be collected for up to three prior years pursuant to La. R.S. 47:1966. Accordingly, we confirm the conclusion reached in La. Atty. Gen. Op. No. 11-0233.

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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JDC/JCMIV