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**RQ-796**

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January 30, 1995

*SSS*  
*RQ-00796-DM*  
*File # A-31564-95*  
*FD# 31564*  
*32836*

Hon. Dan Morales  
Attorney General of Texas  
Supreme Court Building  
P.O. Box 12548  
Austin, TX 78711-2548

**ATTENTION:** Opinions Committee, Chairperson

Ladies & Gentlemen:

Mr. Jim Robinson, Chief Appraiser of the Harris County Appraisal District, has requested advice regarding the following question:

Does a property owner who is blind, under 55 years of age and employed full-time qualify for an additional disability exemption under section 11.13(c) and (d), Texas Tax Code?

Please supply us with your opinion on the question presented. A memorandum brief is enclosed. Should there be additional questions regarding this matter, please contact me at (713) 957-5295.

Very truly yours,

**MIKE DRISCOLL**  
**HARRIS COUNTY ATTORNEY**

*Bernardo J. Garcia*  
Bernardo J. Garcia  
Assistant County Attorney

C:

Jim Robinson  
Chief Appraiser  
Harris County Appraisal District

Jerry Schank  
Bureau Chief  
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Harris County Attorney

First Assistant: Marsha L. Floyd - Bureau Chiefs: James E. McKnight, Admin. Services, Jerry B. Schank, David Hurley -  
Division Chiefs: Dori A. Wind, Mary J. McKerall, Rock W.A. Owens, Frank E. Sanders,  
Richard S. Hill, Rosalinda Garcia, Anthony Loria.

## MEMORANDUM BRIEF

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**RE:** Whether a person who is blind, under 55 years of age and employed full-time qualifies for an additional disability exemption under section 11.13(c) and (d), Texas Tax Code.

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### Facts:

A property owner has applied for an additional exemption under §11.13(c) and (d), Texas Tax Code. He is vision impaired and would otherwise meet the definition of "blindness" found in 42 U.S.C. 416. The property owner is under 55 years of age and is currently employed full-time as a teacher with a local school district.

The appraisal district has granted the property owner a general homestead exemption under §11.13(a), Tax Code, but questions the property owner's entitlement to the additional exemption under §11.13(c) and (d), Tax Code. The appraisal district believes that he does not meet the definition of disabled as stated in 42 U.S.C. §423(d)(1) because his blindness does not prevent him from engaging in substantial gainful activity.

### Summary:

A blind individual is not entitled to a disability exemption under §11.13(c) or (d), Tax Code, if he does not meet the definition of "disability" found in 42 U.S.C. §423(d)(1).

### Homestead and Disability Exemption

The general homestead exemption is found at §11.13(a), Tax Code, and provides as follows:

A family or single adult is entitled to an exemption from taxation for the county purposes authorized in Article VIII, Section 1-a, of the Texas Constitution of \$3,000 of the assessed value of his residence homestead.

A disabled person is also entitled to an additional exemption under §11.13(c) and (d), Tax Code, which reads as follows:

(c) In addition to the exemption provided by Subsection (b) of this section, an adult who is disabled or is over 65 or older is entitled to an exemption from taxation by a school district of \$10,000 of the appraised value of his residence homestead.

(d) In addition to the exemptions provided by Subsections (b) and (c) of this section, an individual who is disabled or is 65 or older is entitled to an exemption from taxation by a taxing unit of a portion (the amount of which is fixed as provided by Subsection (e) of this section) of the appraised value of his residence homestead ...

### **Definition of Disability:**

The granting of an additional exemption to a disabled person involves applying a legal definition of disability not specifically stated in the tax code. Instead, an appraisal district must examine several state and federal statutes to make a determination of eligibility.

The Texas Constitution, Art. VIII, Sec. 1-b(b), provides the initial definition of a disabled person as one:

... who is under a disability for purposes of payment of disability insurance benefits under the Federal Old-Age, Survivors, and Disability Insurance or its successor . . . .

The Tax Code incorporates this same definition of disability and states as follows:

"Disabled" means under a disability for purposes of payment of disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance. §11.13(m)(1), Tax Code.

In MW-26, the Texas Attorney General was asked whether article VIII, §1-b(b) of the Texas Constitution included the definition of disability as found in two federal statutes: (1) the Federal Old-Age, Survivors, and Disability Insurance program found at 42 U.S.C. §§401-431 and (2) the Supplemental Security Income program's Aid to the Blind and Aid to the Totally and Permanently Disabled found at 42 U.S.C. §§1381-1383c. Your office responded as follows:

The definitions of "disability" provided in the statutes establishing these two programs differ slightly. Compare 42 U.S.C. §423(d)(1) with 42 U.S.C. §§1382c(a)(3)(A), (B). We believe the language of article VIII, section 1-b(b) of the Constitution clearly adopts the definition of disability included in the present Federal Old-Age, Survivors, and Disability Insurance Benefits legislation or future versions of it.

Atty. Gen. Opin. No. MW-26 (1979), at page 79. Accordingly, appraisal districts must only look to the definition of disabled found in 42 U.S.C. §423(d)(1). The Federal Old-Age, Survivors, and Disability Insurance program, defines disabled as follows:

Disability means:

(A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

(B) in the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in Sec. 416(i)(1)), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with the same regularity and over a substantial period of time.

"Blindness" is defined in 42 U.S.C. §416(i)(1), as follows:

... the term "blindness" means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual fields subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less.....

It appears that a property owner needs to prove that he is blind according to 42 U.S.C. §416(i)(1) and that he meets the other requirements under 42 U.S.C. §423(d)(1) to qualify for an exemption under §11.13(c) and (d), Texas Tax Code. Section 423(d)(1)(B) merely adopts by reference the definition of blindness found in §416(i)(1).

The Texas Property Tax Exemption Handbook (promulgated by the former State Property Tax Board and now the Comptroller's Office) makes the following statement regarding the disability exemption.

**Homestead exemptions for the disabled.** The Property Tax Code provides two types of homestead exemptions for persons who are disabled. *Disabled* means a disability for the purposes of payment of disability insurance benefits under the Federal Old-Age, Survivors, and Disability Insurance Act. This act, administered by the Social Security Administration, defines disability as

1. inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that is expected to last or has lasted for at least 12 months, or which will result in death; or

2. in the case of an individual who has attained the age of 55 and is blind, inability by reason of such blindness to engage in substantial gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

Persons who receive benefits under this act may provide a statement of continuing eligibility or an awards notice from the Social Security Administration as proof of eligibility for the exemption. However, the awards notice is valid for only six months.

If a person meets the definition of disability stated above but does not receive benefits from Social Security, he or she may still qualify for the homestead disability exemption. The individual may not qualify for benefits by the Social Security Administration because of other benefits that he or she receives. In such instances, the chief appraiser of the appropriate appraisal district must determine the type of proof of disability that he or she will require to be filed with the exemption application.

The chief appraiser must be careful in determining whether a person who does not receive Social Security disability benefits meets the definition stated above. A person considered disabled under Civil Service, railroad employees, teachers, disabled veterans, or other disability programs may not meet the definition of the Federal Old-Age, Survivors, and Disability Insurance Act. These other programs are less restrictive in disability standards. Attorney General Opinion No. MW-26 (1979) contains additional information in this area.

State Property Tax Board, Texas Property Tax Exemption Handbook, SPTB Publication No. 3:85 at 13 (June 1985).

This interpretation appears to be in conformity with existing federal case law. Under 42 U.S.C. §423, the establishment of a disability is a two-step process:

First, there must be a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for continuous period of not less than 12 months; and second, there must be a factual determination that the impairment actually renders claimant unable to engage in any gainful employment. Laws v. Celebrezze, C.A. Va. 1966, 386 F.2d 640.

A reading of MW-26 would seem to indicate that the Texas Attorney General has adopted similar reasoning. Additionally, the attorney general's opinion adopts a less stringent standard than the federal definition of disabled. Opinion MW-26 states as follows:

In our opinion, article VIII, section 1-b(b) does not require that the disabled individual actually receive benefits under the Old Age and Survivors insurance provision.

Atty. Gen. Opin. No. MW-26 (1979), at page 80. The prevailing interpretation appears to be that a disabled property owner need only meet the definition of disability found in 42 U.S.C. §423(d)(1) irrespective of whether he is receiving payments under the federal program. (See 21 J. Howell, Property Taxes §213 (Texas Practice 3d ed. 1988)).

In determining whether a blind property owner meets the definition of disabled as found in 42 U.S.C. §423(d)(1), it appears that there are two subdefinitions that must be applied. The two subdefinitions of §423(d)(1) read as follows:

Disability means:

(A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

(B) in the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in Sec. 416(i)(1)), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with the same regularity and over a substantial period of time.

Therefore, under subsection (A) a blind person is disabled if he is unable to engage in any substantial gainful activity by reason of his blindness. And secondly, under subsection (B) a blind person is disabled if he is over 55 years of age and by reason of his blindness he is unable to engage in any substantial gainful activity comparable to that in which he previously engaged.

In the present situation, the blind property owner has asserted that only section 416 should be applied to his determination. However, the prevailing view is that only the definition found in section 423 applies because that is the section used to determine disability for purposes of receiving disability benefits. The other, section 416, applies for other purposes but specifically does not apply to determination of eligibility for disability benefits.

The appraisal district, in applying the section 423 test to a blind property owner must determine (1) whether he has a medically determinable impairment that will last at least a year or result in death, and (2) whether he is unable to engage in any substantial gainful activity by virtue of the impairment. Alternatively, under subsection (B), if he were over 55 and blind, the appraisal district would still have to determine whether he was unable to engage in substantial gainful activity requiring skills or abilities that he was able to use previously.

Considering that the present property owner is not 55 or older, he does not meet the alternative definition of disabled in subsection (B), although he does meet the definition of "blindness" found in section 416. Therefore, to qualify for an additional exemption, a blind property owner under 55 must satisfy the definition of disability under 42 U.S.C. §§423(d)(1)(A):

inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; ...

Consequently, even though a property owner could establish that he has a medically determinable physical impairment he would still not be entitled to an exemption under §11.13(c) and (d), Tax Code, if he is engaged in any substantial gainful activity. Given that the present property owner is employed as a full-time teacher by a local school district, he would not be entitled to the additional exemption under §11.13(c) and (d), Tax Code.

**Conclusion:**

A person who is blind, under 55 years of age and gainfully employed, is not entitled to the additional disability exemption under §11.13(c) and (d), Tax Code.

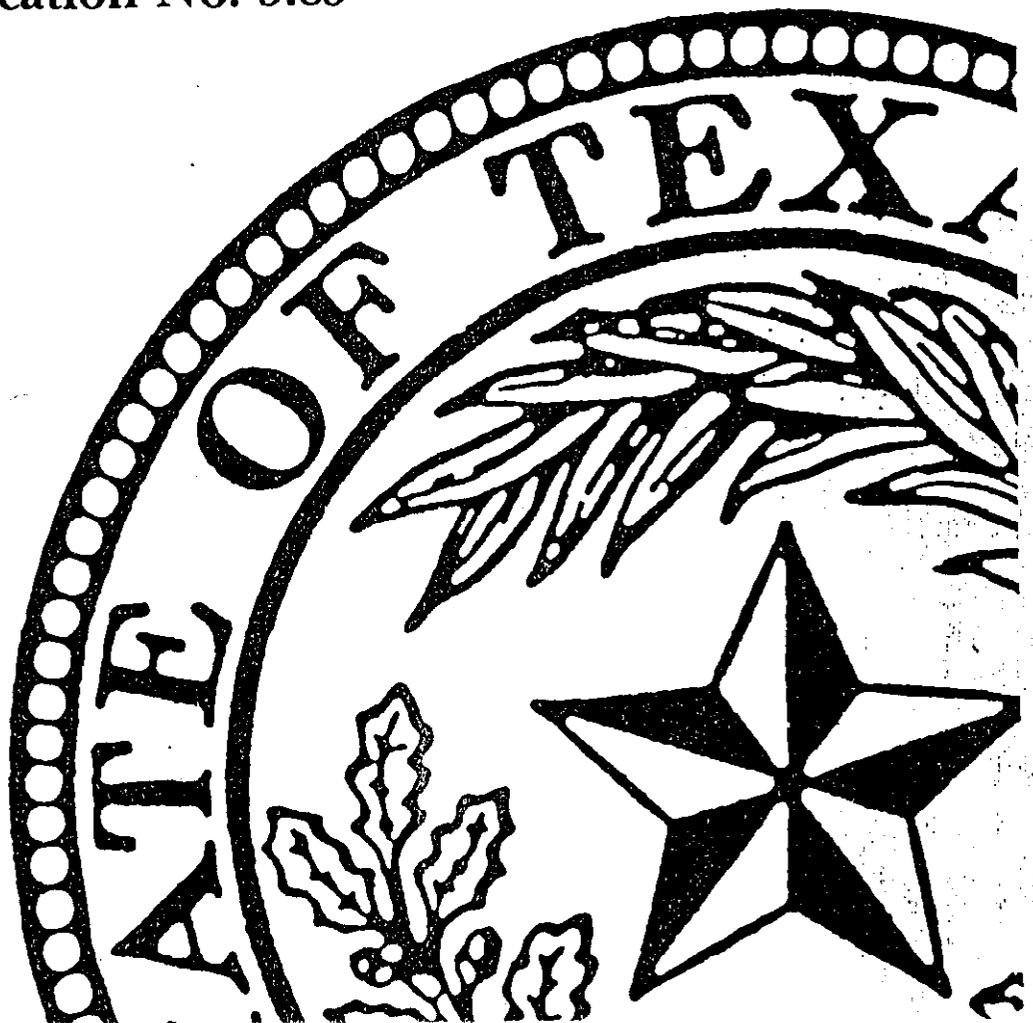
# Texas Property Tax Exemption Handbook

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homestead is \$40,000 less \$12,000, or \$28,000. For the city, the taxable value of the homestead is \$40,000 less \$5,000, or \$35,000. Even though 10 percent of \$40,000 is \$4,000, the exempt amount may not be less than \$5,000.

A taxing unit that adopts the percentage homestead exemption can still levy taxes on the exempt value for the purpose of debt payment until the debt is discharged. The taxing unit may disregard the exemption for debt purposes if cessation of the levy impairs the taxing unit's ability to meet contract obligations. This is similar to the situation in exemption (2) given above and applies only for debt incurred prior to the adoption of the percentage homestead.

In adopting the percentage homestead exemption, the governing body of the taxing unit acts in an official manner prescribed by law. As of this writing, there is no deadline; but the governing body must adopt the exemption before it adopts a tax rate. Chief appraisers should encourage taxing units to act early so that appropriate administrative steps may be taken. These steps include the filing of applications, exemption information on notices of appraised value, protests to the appraisal review board if an exemption is denied, and certification of taxable values (less exemptions) by the appraisal review board of the appraisal district. Also, a taxing unit must take official action to change the percentage of the exemption or rescind the exemption altogether [Art. 8, Sec. 1-b(c), Tex. Const.].

**Homestead exemptions for the disabled.** The Property Tax Code provides two types of homestead exemptions for persons who are disabled. *Disabled* means a disability for the purposes of payment of disability insurance benefits under the Federal Old-Age, Survivors, and Disability Insurance Act. This act, administered by the Social Security Administration, defines disability as

1. inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that is expected to last or has lasted for at least 12 months, or which will result in death; or
2. in the case of an individual who has attained the age of 55 and is blind, inability by reason of such blindness to engage in substantial gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

Persons who receive benefits under this act may provide a statement of continuing eligibility or an awards notice from the Social Security Administration as proof of eligibility for the exemption. However, the awards notice is valid for only six months.

If a person meets the definition of disability stated above but does not receive benefits from Social Security, he or she may still qualify for the homestead disability exemption. The individual may not qualify for benefits by the Social

Security Administration because of other benefits that he or she receives. In such instances, the chief appraiser of the appropriate appraisal district must determine the type of proof of disability that he or she will require to be filed with the exemption application.

The chief appraiser must be careful in determining whether a person who does not receive Social Security disability benefits meets the definition stated above. A person considered disabled under Civil Service, railroad employees, teachers, disabled veterans, or other disability programs may not meet the definition of the Federal Old-Age, Survivors, and Disability Insurance Act. These other programs are less restrictive in disability standards. Attorney General Opinion No. MW-26 (1979) contains additional information in this area.

If qualified as disabled, a person may receive the following exemptions:

1. A school district *must* grant a \$10,000 exemption from the market value of the homesteads of disabled persons. The school board of the district may pass a resolution, however, that disallows the exemption for the debt service portion of the school taxes. The school district may disregard the exemption if (a) the school district pledged the taxes for payment of debt without deducting the exemption amount and (b) the granting of the exemption impairs the obligation of the contract creating the debt. Disregarding the exemption for the debt service tax applies only to debt incurred prior to May 31, 1979, [Art. 8, Sec. 1-b(c), Tex. Const.].

2. A taxing unit may grant an optional disabled homestead exemption. This exemption may not be for less than \$3,000 from the market value of the homestead; no maximum amount is set by law. Disabled property owners may receive the exemption in one of two ways: (a) by the governing body of the taxing unit through official action or (b) by a favorable vote of a majority of the qualified voters in the taxing unit. For the election process, the voters must submit a petition signed by at least 20 percent of the number of qualified voters who voted in the preceding election requesting an election on granting the exemption. The governing body shall call for an election and grant the exemption if a majority votes in favor of the disabled exemption. The governing body may pass a resolution, however, to disregard the exemption for the debt service portion of the tax. In such a case, the taxing unit disallows the exemption for the debt service incurred prior to its adoption.

Once authorized, the taxing unit's governing body or voters may repeal, decrease, or increase the exemption in later years. In the case of a decrease, the amount of the exemption may not be less than \$3,000 of the market value [Art. 8, Sec. 1-b(b), Tex. Const.].

**Homestead exemptions for over-65 taxpayers.** Two types of homestead exemptions are available to individuals who are 65 years of age or older.

LOUIS J. GIRARD, M.D., F.A.C.S.  
LINDA C. OBENOUR, M.D., F.I.C.S.

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June 6, 1994

Re: Mr. Scott Amerson

To Whom It May Concern;

Mr. Scott Amerson has been under my care since 1988. He has bilateral optic atrophy. His best corrected visual acuity is right eye, light perception and left eye, 1/200. He also has exotropia.

This patient is legally blind.

  
Louis J. Girard, M.D.

LJG/bb