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OPINION COMMITTEE



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I.D. # 47858

BASTROP COUNTY AUDITOR'S OFFICE

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RQ-0067-KP

November 4, 2015

The Honorable Ken Paxton
Attorney General of Texas
Box 12548
Austin, Texas 78711-2548

RE: Opinion of the propriety of denying an ad valorem property tax deferral on certain property, pursuant to TEX. TAXCODE § 33.06.

Dear Attorney General Paxton:

I write seeking your opinion on the propriety of denying an ad valorem property tax deferral on certain property, pursuant to TEX. TAX CODE § 33.06.

The Bastrop Central Appraisal District, in which Bastrop County participates, has received a number of requests from taxpayers seeking to defer their tax liability on property that is used partially as a residence homestead and partially as commercial property, open-space property under TEX. CONST. ART. VIII, §§ 1-d or 1-d-1, or other residential property that doesn't qualify for a homestead exemption under TEX. TAX CODE § 11.13. While TEX. TAX CODE § 33.06(a) allows for the deferral of tax liability on homestead property only, the CAD is often unable to carve out the portion of the land that is being used as a homestead because it does not have a legal description of the property being used as a residence homestead. Furthermore, the cost of surveying each of those parcels is prohibitive. As a result, the CAD is often forced to grant a deferral on an entire lot; some of which is often used for a non-qualifying purposes and, therefore, not in compliance with § 33.06(a)(2).

The Bastrop CAD, like most other appraisal districts within the State, appraises property by the parcel and assigns an account number to each lot. The boundaries of these parcels are determined by the latest survey performed on the property, and the appraisal district cannot subdivide these lots without performing a new survey delineating the new boundaries of each subdivided lot. Due to the prohibitive cost of land surveys, which can cost thousands of dollars per lot, the Appraisal District is often placed in the difficult situation of having to grant or deny these mix use deferrals. Therefore, the CAD must decide whether to improperly grant a deferral on commercial property, open-space property and other residential property located within the boundaries of the parcel containing a residence homestead, or denying the deferral on the entire lot.

Hence, I respectfully request the guidance of the Attorney General's Office in determining the following:

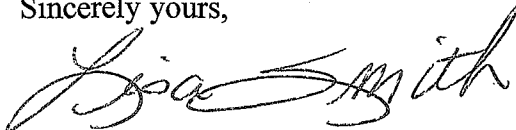
1. Is the Appraisal District allowed to grant a deferral under TEX. TAX CODE § 33.06(a) when the property is being used partially as a residence homestead and partially for a purpose other than residential homestead; such as commercial property or agricultural land?
2. Does a TEX. TAX CODE § 33.06(a) deferral apply to an entire parcel under a property account, as determined by the latest survey, which is used for both residence homestead and non-residential homestead purposes?
3. Can the Appraisal District require that the property owner provide a land survey tracing the residence homestead portion of the land, at the property owner's expense, in order to provide the CAD with a legal description and map to separate the homestead from the non-homestead property?

The Appraisal District seeks to enforce the Tax Code as mandated by the Texas Legislature, however, in this particular instance the application of the law comes at the expense of the taxpayers and general public. If the CAD were to perform these surveys, the expense could amount to thousands of taxpayer dollars being spent for the benefit of a few individuals seeking deferral. On the other hand, deferrals improperly granted on non-qualifying property also takes from the tax revenues received by the county and ultimately affects the tax rate and, therefore, the tax liability of those taxpayers not receiving deferrals.

It is the CAD's position that if a taxpayer seeking deferral is running a business out of his or her property, he or she should bear the cost of providing the CAD with the necessary information to grant the § 33.06(a) deferral only on the qualifying property. However, the Texas Tax Code does not provide specific language addressing this set of circumstances. Therefore, I would sincerely appreciate the Attorney General's guidance on the correct way for the CAD to address these requests for deferral.

Thank you in advance for your careful consideration on this matter.

Sincerely yours,

A handwritten signature in cursive script that reads "Lisa Smith". The signature is written in black ink and is positioned above the typed name and title.

Lisa Smith
Bastrop County Auditor