OPN 91-0072

Dec 09, 1991

Re: Exemption; Homestead; Resident Alien
Section 196.031, F.S.
Rule 12D-7.007(3), F.A.C.
Your letter to Director, Division of Ad Valorem Tax
dated November 14, 1991

Dear :

Your letter of November 14, 1991 was referred to me for review and response. In your letter you request advice concerning the following questions based on the following facts.

FACTS

You state you were granted permanent status by visa, on January 16, 1990. You state you possessed a "green card" indicating permanent residence effective in November, 1989.

ISSUE

You question why you did not receive the homestead exemption for the 1990 tax year, and you also question the value adjustment board confirming the decision of the property appraiser.

RESPONSE

Unfortunately, the law in this area recognizes only permanent residents. In fact, permanent residence is required by state statute. See section 196.031(1), Florida Statutes. The office of the attorney general of Florida and the Florida Supreme Court have for many years interpreted this statute to require that only permanent residents of the United States can qualify for the homestead exemption.

See the case of Juarrero V. McNayr, 157 So.2d 79 (Fla. 1963). The court stated the issue as whether a permanent visa gives a

person freedom and right with certainty to make and declare a bona fide intention of permanent residence in the home owned and located in this state. Id. at p. 81. See also Cooke v. Uransky, 412 So.2d 340 (Fla. 1982); Alcime v. Bystrom, 451 So.2d 1037 (Fla. 3d DCA 1984); Raheb v. Dibattisto, 513 So.2d 717 (Fla. 3d DCA 1987); see also Attorney General opinion (AGO) 54-158 and AGO 61-148 and Rule 12D-7.007(3), F.A.C.

The reason for the rulings is that a person must have the right to remain in the United States permanently in order to qualify for the homestead exemption. To qualify for the homestead exemption, a person must intend to make his permanent place of abode on real property which he owns in Florida. If a person does not have a permanent visa, then the person cannot form the intent to reside on realty in Florida and make such realty his permanent residence and place of abode. Thus, under state law, the person cannot qualify for the homestead exemption. This case law has been codified in the Florida Administrative Code at Rule 12D-7.007(3), F.A.C.

In your case, you state you were granted permanent status by visa, on January 16, 1990. In Florida, property taxes are assessed on January 1 of each year based on the facts on that date. The "green card" indicates work status effective in November 1989. It is not sufficient evidence of permanent residence status with the United States Immigration Service. The visa status is such evidence. The property appraiser and Value Adjustment Board were legally required to disapprove this homestead exemption in your case. Accordingly, although you did not qualify for the 1990 tax year, you would apparently qualify as a permanent resident alien for future years and could qualify for the homestead exemption if you apply and if the other criteria of the homestead exemption are otherwise met.

I hope this addresses the points you raise in your letter. If I may be of any further assistance, please do not hesitate to contact me.

Sincerely,

Stephen J. Keller

Assistant General Counsel
Office of General Counsel

SJK/bso
cc: Honorable Ed Crapo
Control No. 91261
Attachment