

IN THE CIRCUIT COURT OF THE SEVENTEENTH
JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR
BROWARD COUNTY, CIVIL DIVISION

CASE NO. 16 - 10849

LOIS HIRSCHTRITT,)
)
Petitioner,)
)
vs.)
)
LORI PARISH, AS BROWARD)
COUNTY PROPERTY)
APPRAISER, AND)
STATE OF FLORIDA,)
DEPARTMENT OF REVENUE,)
)
Respondents.)

Petition for Refund of Real Estate Tax

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Petitioner, Lois Hirschtritt, sues Respondents Lori Parish, as Broward County Property Appraiser, and the Department of Revenue of the State of Florida, and alleges:

1. Petitioner brings this action for a refund of real estate taxes for the years 2010 and 2011 (together with interest and penalties) which were erroneously assessed by the Respondent Broward County Property Appraiser, and requests this Court to enter an order directing Respondent Lori Parish, as Broward County Property Appraiser to issue a Certificate of Correction for the years 2010 and 2011 and directing the Respondent State of Florida, Department of Revenue to order the Broward County Tax Collector to issue a refund of \$5,908.00 to Petitioner.

2. Petitioner is *sui juris* and is presently a permanent resident of Palm Beach County, Florida.

3. Respondent State of Florida Department of Revenue is the agency of the State of Florida which is responsible for passing upon and ordering refunds of taxes as

required by Section 197.182 F.S. Respondent Lori Parish, as Broward County Property Appraiser is the person responsible for issuing a Certificate of Correction

4. Jurisdiction and venue are proper in the Court since the real estate in question is located in Broward County (See Section 194.171(1) F.S.).

5. The general four-year statute of limitations found in Section 95.11(3)(p), Florida Statutes, governs actions to contest tax liens because the legislature did not otherwise specifically provide for a limitation or non-claim period for such actions.

6. Petitioner, Lois Hirschtritt, and her husband, Richard Hirschtritt, previously owned the real estate located at 7881 Beechfern Way, Tamarac, FL 33321, Broward County, described under Folio Number 9104-AB-0530.

7. Petitioner at all times material has been a permanent resident of Florida, as that term is defined in §196.012(17) and (18), Florida Statutes, in that since April 4, 2000 and continuously to February 28, 2013, the subject property has been the place where Petitioner had her true, fixed and permanent home and principal establishment to which, whenever absent, she had the intention of returning.

8. Petitioner has never applied for or received the benefit of a residency-based exemption in another state and has never claimed more than one homestead exemption in the State of Florida.

9. At all times material, Richard Hirschtritt has been a permanent resident of the State of Illinois and never applied for a Homestead Exemption in the State of Florida.

10. Richard Hirschtritt had an Illinois homeowner and senior exemption for the years 2003 through 2009, but no such exemptions for the years 2010, 2011 and 2012.

11. Petitioner only (and not her husband) applied for and received the Homestead Exemption and protection of Save our Homes for the property in question for the years 2003 through 2012, inclusive.

12. All real estate taxes due were timely paid for the years 2003 through 2012, inclusive. See Bill History Exhibit A attached.

13. On July 13, 2012, Respondent, the Broward County Property Appraiser, sent a "Notice of Removal of Ad Valorem Property Tax Exemption", copy attached as Exhibit B.

14. The specific requirement of Florida State law specified in the Notice of Removal of Ad Valorem Property Tax Exemption was:

Pursuant to Section (6) [sic], Florida Statutes, "a person who is receiving or claiming the benefit of an ad valorem tax exemption or a tax credit in another state where permanent residency is required as a basis for the granting of that ad valorem tax exemption or tax credit is not entitled to the homestead exemption provided by this section."

15. The Notice of Removal of Ad Valorem Property Tax Exemption further stated the basis upon which the Respondent Property Appraiser relied in determining that the Petitioner failed to meet the statutory requirements, to wit:

"The homesteaded owner (and/or homesteaded owner's married spouse) is receiving or claiming the benefit of an ad valorem tax exemption or a tax credit in another state where permanent residency is required as a basis for the granting of that ad valorem tax exemption or tax credit. Specifically: Illinois."

16. On July 20, 2012, Respondent Broward County Property Appraiser also purported to remove Petitioner's Homestead Exemption for 2012.

17. Contrary to what the Notice of Removal of Ad Valorem Property Tax Exemption stated, neither the homesteaded owner (the Petitioner) nor the homesteaded owner's married spouse received or claimed the benefit of an ad valorem tax exemption or a tax credit for the years 2010, 2011 and 2012 in another state where permanent residency is required as a basis for granting of that ad valorem tax exemption or tax credit (see attached Exhibits C-1 -- C-5).

18. On July 19, 2012, the Respondent Property Appraiser sent a Notice of Intent to File Lien, copy attached as Exhibit D. The Respondent Property Appraiser in fact filed a

lien on August 24, 2012, copy attached as Exhibit E, which Petitioner paid, together with interest, in the amount of \$30,402.85 on December 26, 2012 (see Exhibit F). The Property Appraiser has satisfied said lien, see Exhibit G.

19. Petitioner timely petitioned the 2012 Broward County Value Adjustment Board to challenge the "removal" of her Homestead Exemption for that year.

20. After a hearing and due consideration, the Special Magistrate recommended overturning the Property Appraiser's action and the Value Adjustment Board granted Petitioner's Homestead Exemption for 2012 (see Exhibit H attached hereto).

21. The Respondent Property Appraiser automatically renewed Petitioner's Homestead Exemption for 2013.

22. The Legislature has not provided for an administrative review of the Respondent Property Appraiser's actions in filing the lien, thereby depriving Petitioner of a plain, speedy and efficient remedy that was available to challenge the denial of the exemption for 2012, as provided in Chapter 194, Part I, Florida Statutes.

23. Accordingly, on February 19, 2013, Petitioner filed a claim for refund on the Respondent Department of Revenue's prescribed Form DR-462 with the Broward County Revenue Collector, requesting that the Respondent Department of Revenue pass upon and order a refund as per Section 197.182(1)(a)(1) and (2), Florida Statutes.

24. Section 197.182, F.S. provides in relevant part:

197.182 Department of Revenue to pass upon and order refunds. —

(1)(a) Except as provided in paragraphs (b), (c), and (d), the department shall pass upon and order refunds if payment of taxes assessed on the county tax rolls has been made voluntarily or involuntarily under any of the following circumstances:

1. An overpayment has been made.
2. A payment has been made when no tax was due.

25. The Broward County Revenue Collector forwarded the claim to Respondent, Florida Department of Revenue. Despite demand, Respondent Florida Department of Revenue has either failed to act thereon or, if it did act thereon, it did not order a refund.

26. "Every person who, on January 1, has the legal title or beneficial title in equity to real property in this state and *who resides thereon* and in good faith makes the same his or her permanent residence, or the permanent residence of another or others legally or naturally dependent upon such person, is entitled to an exemption....." §196.031(1), Fla. Stat.

27. Petitioner has met all the requirements of Section 196.03(1), Fla. Stat. for each of the years 2010 and 2011, while neither she nor her husband have received or claimed the benefit of an ad valorem tax exemption or tax credit in another state in 2010 or 2011 where permanent residency is required as a basis for granting of that ad valorem tax exemption or tax credit.

28. The failure of Respondent, Broward County Property Appraiser, to reinstate the homestead exemption claimed by Petitioner for the years 2010 and 2011, deprives Petitioner of her right to a Homestead Exemption as provided by Section 196.03(1), Fla. Stat. and Article VII, Section 6 of the Florida Constitution.

WHEREFORE, Petitioner requests that the Court (A) direct the Respondent, Lori Parish, as Broward County Property Appraiser to issue a Certificate of Correction for the years 2010 and 2011, (b) direct the Respondent, Florida Department of Revenue to order

the Broward County Tax Collector to issue a refund to Petitioner in the amount of \$5,908.00, (c) award Court costs to Petitioner, and (d) provide such other and further relief as shall be necessary to grant full relief to Petitioner.

A handwritten signature in cursive script, appearing to read "Lois Hirschtritt", written over a horizontal line.

Lois Hirschtritt, Petitioner, Pro Se
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