



THE TEXAS HOUSE OF REPRESENTATIVES

CHAIRMAN Local Government Ways and Means

Transportation

Legislative Budget Board

FRED HILL

September 11, 2003

RQ-0104-GA

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SEP 12 2003

OPEN RECORDS DIVISION

The Honorable Greg Abbott  
Attorney General  
c/o Ms. Nancy Fuller  
Office of the Attorney General  
P. O. Box 12448  
Austin, TX 78701

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SEP 15 2003

OPINION COMMITTEE

Re: Tax Code, Section 11.13(1)

FILE # ML-43252-03

Dear General Abbott:

I.D. # 43252

House Bill 1223 was heard in the House Committee on Local Government Ways and Means and ultimately was enacted during the Regular Session of the 78th Legislature. It became effective immediately on June 18, 2003. The bill amends Section 11.13(1), Tax Code, and defines the term "temporary" for purposes of residential homestead occupancy and qualification for exemption. Specifically, the bill limits the temporary absence from the homestead to two years in order to maintain the property tax exemption, unless the absence is a result of military service or residency in a facility providing services related to health, infirmity or aging.

The question that has been raised concerns the effective date of the bill. Does this limitation related to the qualification for homestead exemptions apply to the tax year beginning on January 1, 2004, or may it apply to homestead exemptions existing on January 1, 2003?

Property qualifies for exemptions, with a few exceptions, on January 1 of a tax year. Section 11.42(a), Tax Code, states that eligibility for an exemption authorized by the Chapter 11 is determined by the claimant's qualifications on January 1. Section 11.42(c) also provides that homestead exemptions for persons over 65 years of age are effective as of January 1 of the year in which the person qualifies and applies for the entire year which means that there is no proration of taxes. Section 11.43(h) and Section 11.43(i) permit chief appraisers to cancel exemptions if either (1) they learn of any reason indicating that an exemption should be canceled, or (2) they determine that an exemption has been erroneously allowed in any one of five preceding years. There is no provision allowing cancellation of an exemption for which the applicant had qualified on January 1. The cancellations permitted by law relate to errors that the appraisal district made in permitting the exemptions on the qualification date - not changes in law effective after the qualification date.

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Attorney General Greg Abbott

September 11, 2003

The Code Construction Act (Chapter 311, Government Code) provides guidance in the application of the new law to the question raised. Section 311.022 provides that a statute is presumed to be prospective in its application unless expressly made retrospective. Here, there is no reference in applying the new law to property that had qualified for homestead exemptions on January 1, 2003. The failure of the Legislature to indicate its intent to permit a retrospective application and possible cancellation of previously qualifying exemptions means that the new law can only apply to subsequent tax years beginning in 2004. A person who qualified for the homestead exemption on January 1, 2003, had a right to that exemption for the rest of the year, as a matter of law. That vested property right cannot be removed retroactively by operation of a legislative enactment. *Reames v. Police Officers' Pension Bd.*, 928 S.W. 2d 628 (Tex.Civ.App.- Houston [14th Dist.] 1996, no writ)

Sections 311.021, Government Code, provides that it is presumed that "a just and reasonable result is intended" by the Legislature in enacting new laws. To permit chief appraisers to cancel previously granted homestead exemptions on the basis of a change in the law that limits qualifications and has an effective date some six months after the date for which qualifications must exist would create an unjust and unreasonable result.

Legislative intent is controlling in interpreting whether a statute has a retrospective or prospective application. *State v. Arrellano*, 801 S.W. 2d 128 (Tex.Civ.App.- San Antonio 1990, no writ)  
The legislative intent of this bill is evidence by the opinions of its author, The Honorable Jerry Madden, as expressed in the letter attached hereto.

I therefore respectfully request an opinion of the Attorney General concerning the application of the new law to January 1, 2003. I strongly contend that the law should apply to all residential homestead exemption qualifications beginning with the 2004 tax year.

Sincerely,



Fred Hill

Attachment



**JERRY MADDEN**

STATE REPRESENTATIVE  
DISTRICT 67

September 11, 2003

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The Honorable Fred Hill, Chairman  
House Committee on Local Government Ways and Means  
State Capitol, Room 1W.03  
Austin, TX 78701

Dear Chairman Hill:

I am advised that the Travis Central Appraisal District is interpreting my HB 1223, which was heard in your committee during the 78th Regular Session of the Texas Legislature and reported out favorably as amended, in such a manner that results in a retroactive application of the changes it made to the Property Tax Code though established code construction procedures which drafters follow when crafting legislation fully support a prospective application of the bill.

My intent in authoring HB 1223 was to provide a standard for determining when a temporary absence no longer is temporary but constitutes a change of one's residential homestead except in the limited circumstances explicitly provided for by my bill. In situations not exempted, if a two year or greater absence from a residential homestead can be documented by an appraisal district, my bill authorizes an appraisal district to revoke that property's homestead exemption.

I did not anticipate my bill resulting in a homestead exemption being invalidated that was in force prior to the effective date of the bill, which was June 18, 2003. The earliest date which I deem appropriate for revoking a homestead exemption under the provisions of HB 1223 would be January 1, 2004, the point in time by which a request for a homestead exemption must have been received by an appraisal district so once the declaration is approved it can be applied to the entire tax year.

It was not my intent that the bill modify the existing tax rolls for 2003, and neither the bill nor the bill analysis make any reference to overriding law in effect prior to the bill's passage.

Thank you for assisting me in this matter, and I trust the Texas Attorney General's office will confirm this explanation of how I expected my legislation to be applied.

Sincerely,

A handwritten signature in black ink that reads "Jerry A. Madden". The signature is stylized and cursive.

Jerry A. Madden

Vice Chairman, State Affairs/Calendars Committee and Public Education Committee member/  
House Select Committee on Public School Finance member

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