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RQ-0140-KP

Honorable Ken Paxton
Texas Attorney General
Open Records Committee
P O Box 12548
Austin TX 78711-2548

Re: Proper meaning of a “facility that provides services related to health, infirmity or aging” as used in Tax Code §11.13(1)(2)(B)

Dear Attorney General:

Brazos Central Appraisal District (“BCAD”) has requested that this office seek an Attorney General opinion to assist BCAD and its chief appraiser in the proper application of the Residence Homestead provisions of Tax Code §11.13.

Background

Tax Code §11.13 provides partial exemptions from taxation for residence homesteads. §11.13(j) defines the term “residence homestead”, and included in that definition is a requirement that the structure be “occupied as the individual’s principal residence by an owner...” §11.13(j)(1)(D).

As it relates to the issues presented in this letter, §11.13(1) provides in part that a qualified residential structure does not lose its character as a residence homestead when the owner who qualifies for the exemption temporarily stops occupying the structure as a principal residence if that owner does not establish a different principal residence and *the absence is caused by the owner’s residency in a facility that provides services related to*

health, infirmity or aging. §11.13 does not define the term “facility”, and it does not define or describe what was intended by the term “services related to health, infirmity or aging.”

It is not uncommon for a property owner to live in his/her home for decades, and during that time the application of §11.13 rarely presents an issue for chief appraisers. It is also common that some of these owners, as they reach the latter years of their lives, move away from their residence homesteads in order to live in one or more types of places that specialize in living arrangements for senior citizens, and in some cases for senior citizens who require assistance with activities of daily living. By way of examples only, some of these places are described as “senior independent living”, some are described as “assisted living centers”, and others are described as “skilled nursing” facilities.

The “independent living” type facilities often provide dining services, basic housekeeping, laundry, and transportation. Some might include recreational facilities such as exercise rooms and pools, and some might also include access to a beauty shop or barber shop. They typically do not provide health care or assistance with activities of daily living. Sometimes, these independent living arrangements are part of a “continuing care facility” that includes independent living, assisted living and skilled nursing, all on the same campus.

Chief appraisers are required to determine whether a person (often a senior citizen) who has moved out of his/her principal residence, is still entitled to the residence homestead exemptions provided by §11.13. The Tax Code recognizes that there are two types of circumstances in which an absence from the homestead in excess of two years will not result in a loss of the homestead exemption. One of those circumstances is an absence caused by the owner’s military service. The other circumstance, which is the basis of this request, is:

“The owner’s residency in a facility that provides services related to health, infirmity or aging.” Tax Code §11.13(1)(2)(B).

The term “facility that provides services related to health, infirmity or aging” is not defined in the Tax Code, and apparently is not defined in any other statute. There are no appellate opinions that discuss or define these terms as used in the Tax Code.

Chief appraisers are left without clear criteria to use to determine if a senior citizen who left his/her residence homestead is residing in a “facility that provides services related to health, infirmity or aging.”

Discussion

Tax Code §11.13 was amended by the Legislature in 2003, as part of House Bill 1223. The House Research Organization prepared a bill analysis that made reference to property owners who have legitimate reasons to be away from their principal residences for extended periods of time, including *“those who required long-term care in a hospital or nursing home.”*

A bill analysis prepared the Senate Research Center, in its “Digest and Purpose” section, refers to a *“health-related institutionalization.”* Attorney General opinion (GA-0148) related to whether the 2003 amendments to Section 11.13 applied to the 2003 tax year. In dictum, the Attorney General discussed the concept of a temporary cessation of occupancy of the homestead, and noted:

“In short, to qualify as temporarily absent, an owner may not be absent for two years or more unless he or she is on active military duty outside the United States *or is confined in an institution such as a nursing home or hospital.*” [emphasis added]

Further, §11.13(1)(2) states that the absence [from the homestead] must be “caused by” the residency in a facility that provides services related to health, infirmity or aging. The use of the words “caused by” might suggest a legislative intent that the absence must be involuntary to some extent.

It appears reasonable that a “skilled nursing” type of facility, and an “assisted living facility” would be facilities that provide services related to health, infirmity or aging.” Typically, a person moves to one of these types facilities because his/her safety and welfare require that he/she move out of the principal residence and into one of these types of facilities. However, there are new types of “independent living” facilities which vary greatly in services and amenities. Many people move to these types of facilities primarily because of convenience. These people are still fully capable of living in their own homes, but do not require assistance with activities of daily living, such as feeding, dressing, moving, bathing, or other personal needs or maintenance. These independent living facilities do not usually provide any of those types of services, and do not provide direct health care or administration of medication. Instead, they generally offer a safe and maintenance-free place to live, and in many cases provide exercise rooms and services, cafeterias, housekeeping services, and transportation to shopping areas, physician’s offices, etc.

It is also not uncommon for a person to move to a “continuing care” facility, which facility offers three different living options— (1) independent living, (2) assisted living, and (3) skilled care.

Requested Opinion

With these issues in mind, this office, as a service to BCAD, respectfully requests an attorney general opinion outlining the proper factors that should be used to determine whether any type of residence is a “facility that provides services related to health, infirmity or aging” as that term is used in Tax Code §11.13.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. W. Anderson', written in a cursive style.

Rodney W Anderson
County Attorney