



STATE OF ARKANSAS  
ATTORNEY GENERAL  
LESLIE RUTLEDGE

Opinion No. 2016-074

October 4, 2016

The Honorable Micah S. Neal  
State Representative  
800 Fairway Circle  
Springdale, AR 72764-1032

Dear Representative Neal:

I am writing in response to your request for an opinion on whether Ark. Code Ann. § 26-26-1119(a)(2)(B)(i), or any other Arkansas law, precludes an Arkansas property owner who claims a homestead property tax credit in another state from claiming a homestead property tax credit in a county within Arkansas during the same calendar year.

Your specific questions in this regard are as follows:

1. Whether Arkansas law precludes an Arkansas property owner who claims a homestead property tax credit in another state from claiming a homestead property tax credit in a county within Arkansas during the same calendar year?
2. If the answer to Question 1 is "yes," whether the county assessor is tasked under Ark. Code Ann. § 26-26-1118(b) with checking outside of the State of Arkansas for other homestead property tax credits claimed in the same calendar year by an Arkansas property owner who has applied for a homestead property tax credit within the assessor's county?

**RESPONSE**

In my opinion, the answer to your first question is "no," but it should be noted that a property owner who claims both the homestead property tax credit provided

under Arkansas law, and a similar credit provided under the laws of another state that is available only with respect to the property owner's principal place of residence, will necessarily be out of compliance with one or both states' principal-residence condition. Because, in my opinion, the answer to the first question is "no," the condition of the second question is not met.

## DISCUSSION

***Question 1: Whether Arkansas law precludes an Arkansas property owner who claims a homestead property tax credit in another state from claiming a homestead property tax credit in a county within Arkansas during the same calendar year?***

Amendment 79 to the Arkansas Constitution requires the General Assembly to "provide by law for an annual state credit against ad valorem property tax on a homestead..."<sup>1</sup> The implementing legislation currently provides for an annual homestead property tax credit of \$350.<sup>2</sup>

The implementing legislation also provides that "[n]o property owner shall claim more than one (1) homestead property tax credit for each year."<sup>3</sup>

The answer to your question thus depends on the meaning of the term "homestead property tax credit" as used in the implementing legislation. If the term includes a credit against property taxes levied under the laws of another state, then Arkansas law clearly precludes claiming both such a credit and the homestead property tax credit provided under Arkansas law.

In my opinion, however, the term "homestead property tax credit" does not include a property tax credit claimed under the laws of another state. I reach this conclusion because the implementing legislation indirectly indicates in several ways that the term describes only the credit available under Arkansas law.

First, the implementing legislation sets forth consequences that arise from claiming more than one homestead property tax credit.<sup>4</sup> The consequences differ,

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<sup>1</sup> Ark. Const. amend. 79, § 3.

<sup>2</sup> Ark. Code Ann. § 26-26-1118(a)(1)(A) (Supp. 2015).

<sup>3</sup> Ark. Code Ann. § 26-26-1119(a)(1) (Repl. 2012).

depending on whether the “unlawfully claimed” credit relates to land in the “same county” as the one in which the credit is “lawfully claimed,” or relates to land in “a county other than the county” in which the credit is lawfully claimed.<sup>5</sup> In the latter case, the property owner “shall pay the entire amount of the unlawfully claimed homestead property tax credit and the penalty at the time of payment...”<sup>6</sup> But there can be no assurance that another state’s laws impose any penalty on a person who “unlawfully claims” a property tax credit under those laws. In the absence of such a penalty, the implementing legislation’s reference to one is without meaning. This is a good indication the legislature was speaking only about another county in Arkansas.

The implementing legislation also provides that penalties collected thereunder “shall be remitted to the county treasurer to be credited to the county general fund” and that tax credits repaid thereunder “shall be remitted to the Treasurer of State for deposit into the Property Tax Relief Trust Fund...”<sup>7</sup> If the term “homestead property tax credit” is taken to include a credit claimed under the laws of another state, the implementing legislation’s deposit requirements must be interpreted as this state’s attempt to require deposit in this state of amounts due under, and surely payable to, governmental bodies in another state. Such an interpretation would not, in my opinion, be reasonable or practicable. It is far more likely the legislature was speaking specifically about Arkansas only.

Finally, the phrase “county other than the county” where the credit is properly claimed cannot reasonably be interpreted to refer to all out-of-state entities that may levy property taxes and allow credits similar to the Arkansas homestead property tax credit. Louisiana, for instance, is divided into parishes, not counties. Additionally, it is entirely possible that out-of-state property taxes may be levied by the state itself or by a local entity, like a municipality, that is not a county or analogous to a county. The implementing legislation’s provisions setting forth consequences of claiming more than one homestead property tax credit would not reach credits granted by other states themselves, or by parishes or municipalities within such states. There is no rational reason to believe the General Assembly

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<sup>4</sup> Ark. Code Ann. § 26-26-1119(a)(2), (b)(3).

<sup>5</sup> Ark. Code Ann. § 26-26-1119(a)(2)(B)(ii), (i), (b)(3)(B), (b)(3)(A).

<sup>6</sup> Ark. Code Ann. § 26-26-1119(a)(2)(B)(i), (b)(3)(A).

<sup>7</sup> Ark. Code Ann. § 26-26-1119(c)(2), (d)(2).

meant to address out-of-state tax credits and at the same time leave gaping holes in the provisions addressing consequences of failure to comply with Arkansas law.

In my opinion, then, the term “homestead property tax credit,” as used in the implementing legislation, refers only to the credit of that name established under Arkansas law. It follows that Arkansas law does not necessarily preclude a property owner from claiming what may be called a “homestead property tax credit” under the laws of another state, while also claiming the Arkansas credit, and the answer to your question, in my opinion, is “no.”

You should note, however, that my opinion does not mean that a property owner may lawfully claim both the Arkansas credit and a similar out-of-state credit in every instance. Instead, his claim of both credits may be evidence that he is improperly claiming at least one of the credits.

Amendment 79 does not expressly define “homestead,” but it refers repeatedly to a “homestead used as the taxpayer’s principal place of residence....”<sup>8</sup> In the implementing legislation, “homestead” is defined as “the dwelling of a person that is used as his or her principal place of residence....”<sup>9</sup> Thus a person may claim the Arkansas credit only with respect to a *principal* place of residence.

The word “principal” means “chief; primary; most important.”<sup>10</sup> Clearly, only one residence can be a person’s “primary” or “most important” residence. If the other state’s credit is also available only with respect to a principal place of residence, then a property owner’s claim of both credits will necessarily involve his misrepresentation to at least one of the states with respect to the location of his principal place of residence. If his principal place of residence is located in the other state, then his claim of the Arkansas credit is unlawful because the Arkansas credit may not be claimed except with respect to the principal place of residence. If his principal residence is located in Arkansas, then his claim of an out-of-state credit that is also available only with respect to the principal place of residence<sup>11</sup> is

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<sup>8</sup> Ark. Const. amend. 79, §§ 1(a), 1(c)(1), 1(d)(1)(A), 1(d)(1)(B), 1(d)(1)(C).

<sup>9</sup> Ark. Code Ann. § 26-26-1122(a)(1)(A) (Repl. 2012).

<sup>10</sup> BLACK’S LAW DICTIONARY 1384 (10th ed. 2014).

<sup>11</sup> It is at least possible, of course, that another state could provide a credit called a “homestead property tax credit” without limiting it to principal residences. In such a case, a property owner who owned a principal residence in Arkansas and, say, a vacation home in the other state, could lawfully claim both credits.

unlawful. Determining which credit is properly claimed will involve determining the location of the property owner's principal residence. This question is one of fact.

***Question 2: If the answer to Question 1 is "yes," whether the county assessor is tasked under Ark. Code Ann. § 26-26-1118(b) with checking outside of the State of Arkansas for other homestead property tax credits claimed in the same calendar year by an Arkansas property owner who has applied for a homestead property tax credit within the assessor's county?***

Because, in my opinion, the answer to your first question is "no," the condition to this question is not met.

Sincerely,



LESLIE RUTLEDGE  
Attorney General