

I. TABLE OF CONTENTS

I. Table of Contents 2

II. Table of Cases, Statutes and Other Authorities 3

III. Introduction 4

IV. Argument 6

 A. The co-executors do not argue that the exemption continues
 in perpetuity, but rather that the law requires a change in
 status report 6

 B. The assessor's citation of a repealed regulation and a 27 year
 old attorney general's opinion are unavailing 12

 C. The assessor misconstrues the co-executors' arguments,
 collapsing four distinct issues into one 15

 D. The assessor misconstrues the requirements of equal
 protection, and misstates the co-executors' argument 18

 E. The assessor similarly misstates the co-executors' due
 process argument 19

 F. Provision of shelter is no longer a stated purpose of the
 senior citizen property tax exemption 22

 G. The assessor mischaracterizes the record and statutes to
 suggest that Mrs. Crawford and her heirs are unworthy of
 the exemption 24

 H. The pertinent facts are undisputed only because the assessor
 abandoned the life estate issue 25

 I. The assessor falsely alleges a consistency in prior decisions . 25

V. Conclusion 26

II. TABLE OF CASES, STATUTES AND OTHER AUTHORITIES

A. CASES

Board of Regents v. Roth, 408 U.S. 564 (1979)20
DeYoung v. Providence Medical Ctr., 136 Wn.2d 136 (1998) 18
Hooper v. Bernalillo County Assessor, 472 U.S. 612 (1985) 19
Leis v. Flynt, 439 U.S. 438 (1979)20, 21
Prentis v. Atlantic Coast Line Co., 211 U.S. 210 (1908)21
Ski Acres v. Kittitas County, 118 Wn.2d 852 (1992) 16
Smith v. Northern Pacific Railway Co., 7 Wash. 2d 652 (1941)13
United States v. Carlton, 512 U.S. 26 (1994) 21

B. STATUTES AND REGULATIONS

1984 Wash. Laws c. 220 12
RCW 84.36.125 22
RCW 84.36.379 22
RCW 84.36.381 8, 9, 20, 23, 26, 27
RCW 84.36.385 8
RCW 84.40.360 12
RCW 84.69.030 10
RCW 84.69.090 10
RCW 84.38 24
WAC 458-16-07012
WAC 458-16A-100 24
WAC 458-16A-150 8, 9, 10, 11

C. OTHER AUTHORITIES

Attorney General’s Opinion (“AGO”) 1969 No. 2116, 17
Attorney General’s Opinion 1971 No. 31 13, 22
Final Legislative Report, Regular, First and Second Special Sections
 (for SHB 496, that became 1983 Wash. Laws ex. sess. c. 11). 7, 22
Wash. St. Reg. 03-03-099 13
Washington Department of Revenue Bulletin: Property Tax Exemption
 for Senior Citizens and Disabled Persons (Sept. 2006) 12, 16

III. INTRODUCTION

The Brief of Respondent misstates many of the co-executors' arguments, incredibly stating that each of the four asserted errors relates "to the same issue: whether or not the term 'and thereafter' in the statute that describes the tax exemption application process, allows a tax exemption to exist in perpetuity, or whether it merely eliminates the need for an annual application as long as the applicant remains eligible for a tax exemption." (emphasis in original) Brief of Respondent at 1.

Nowhere do the co-executors' argue that the exemption may be retained in perpetuity. They simply argue that there is but a single filing of a claim, as the legislative history specifically states. Following that filing, the statute and regulations provide that the assessor must be informed of a change in status, and renewal applications must periodically be submitted.

The co-executors do not seek to benefit from the senior citizen exemption for periods after their mother's death; they merely seek what their mother was unquestionably entitled to: the proceeds from the benefit of the senior citizen exemption for that part of 2002 during which she was alive and residing in the property.

The assessor completely fails to address the co-executors' argument that both the common law and Washington statutes require that

all causes of action, with exceptions not applicable here, survive for the benefit of heirs. Nor does she address the specific provision in Washington law which provides for property tax refunds to executors. She fails to appreciate any difference between taxes continuing to accrue at a reduced rate after the death of a senior citizen and the refund of an amount overpaid because taxes were accrued at an excessive rate prior to death.

The assessor ignores the overwhelming statutory support, current Washington regulations, and a current publication of the Washington Department of Revenue, all of which demonstrate that the benefit of the senior citizen exemption is pro rated through the date that the senior citizen died. Instead, she refers to a 37 year old attorney general's opinion and a 27 year old regulation that she neglects to mention has been repealed.

The assessor does not dispute Mrs. Crawford's entitlement to the benefit of the exemption, merely the means by which that benefit may be realized. There is no requirement that the exemption statute be strictly construed, as the entitlement to the exemption is not in dispute, only the means by which the fruits of the exemption may be obtained.

The assessor confuses the issues by reading into the statute an intention to provide shelter for the senior citizen, and she cites a repealed

statute suggesting such an intent. The current statute reveals no such intent, rather the legislature's concern is with inflating property values, increasing property taxes, and diminution of senior citizens' income during retirement.

The assessor's brief completely misreads both the requirements of equal protection and the co-executors' argument on this subject. The classes that the co-executors argue are treated disparately without a rational basis are not senior citizens and heirs, but rather two different sets of heirs, who are treated differently depending on whether updated eligibility information was provided to the assessor before or after death.

IV. ARGUMENT

A. THE CO-EXECUTORS DO NOT ARGUE THAT THE EXEMPTION CONTINUES IN PERPETUITY, BUT RATHER THAT THE LAW REQUIRES A CHANGE IN STATUS REPORT

The assessor argues that the co-executors assert that the issue is “whether or not the term ‘and thereafter’ in the statute that describes the tax exemption application process, allows a tax exemption to exist in perpetuity, or whether it merely eliminates the need for an annual application as long as the applicant remains eligible for a tax exemption.” (emphasis in original) Respondent's Brief at 1. But she misstates the co-executors argument. The co-executors never assert that the tax exemption itself exists in perpetuity; rather they argue that the law provides for only a

single filing of a claim, with subsequent change of status reports and renewal applications to keep the assessor up to date as to eligibility. See Appellants' Brief at 20-24. Indeed, the legislative history specifically states that “[o]nce a senior citizen has become qualified for the exemption, she or he never has to reapply.” See Exhibit F¹ at 133, Appellants' Brief at 22-23. The history goes on to refer to the provision of what the regulations call additional reports. Appellants' Brief at 23.

Later, the assessor corrects her earlier misstatement of the co-trustee's argument and admits that the co-trustees “contend that their mother's 1995 application exists in perpetuity, subject to periodic updates or revisions that ‘relate back’ to the original application. This reading would allow heirs of an estate to amend a previous application after the death of the taxpayer.” Respondent's Brief at 9. But she rejects this argument, maintaining that the statutory and regulatory scheme requires an entirely new filing of a claim, notwithstanding the legislative history that unequivocally states that the senior citizen “never has to reapply.” Exhibit F at 133.

First, she argues that “no application survives a period of more than four years without reapplication, so the exemption cannot be applied

¹ References of the form “Exhibit x” refer to exhibits in the Appendix to the Brief of Appellants.

in perpetuity.” Respondent’s Brief at 9. But she ignores the fact that RCW 84.36.385(1) provides that the exemption “shall continue for no more than four years unless a renewal application is filed...” The statute nowhere provides that the exemption is revoked after four years. Rather, it merely requires a renewal application. The fact that the legislature uses the words “renewal application” in RCW 84.36.385(1), but the words “claim” and “filed” in RCW 84.36.381 demonstrates that it intended two distinctly different procedures. The distinction is underscored by WAC 458-16A-150(4)(f), which provides that, in the event of a failure to submit the renewal application, “the exemption is discontinued until the claimant reapplies for the program.” It goes on to provide the assessor discretion to “postpone collection activities” on the higher amount and to work with the claimant in the event of a failure to submit a renewal application, discretion not provided when there is a failure to file the initial claim. The use of the word “discontinued,” rather than “revoked,” indicates that the exemption is only temporarily lost, not that the senior citizen must start from scratch by filing a new claim.

The assessor rejects the co-executors’ argument, stating that it “fails because it relies upon the term ‘and thereafter’ in the first sentence of RCW 84.36.381 to mean that a taxpayer does not have to apply after a disqualification. They need only apply under the existing exemption, even

though it has ceased to exist.” Respondent’s Brief at 8-9. But the assessor assumes what is to be proven, namely that the existing exemption has ceased to exist, reading the words “and thereafter,” out of the statute in these circumstances. Furthermore, she ignores the legislative history that clearly states that a completely new application is never required.

Nothing in the statutory scheme or the regulations indicates that the original exemption ever ceases to exist, only that the benefit of the exemption may be lost, sometimes temporarily. In fact, RCW 84.36.381(6) indicates that the original exemption does not become a nullity, as it provides that “[i]f the person subsequently fails to qualify under this section only for one year because of high income, this same valuation shall be used upon requalification.” The previously filed claim clearly cannot “cease to exist” under these circumstances, as the valuation at the time the prior claim was filed becomes the valuation used upon requalification. In fact, high income for but a single year was precisely Mrs. Crawford’s situation.

The assessor then argues that “[n]otwithstanding the clear statutory language, the administrative code governing senior tax exemptions is also consistent with the concept that a new application is required.” Respondent’s Brief at 10. But the regulation that she cites, WAC 458-16A-150(f), refers to a renewal application, not the filing of an initial

claim. She goes on to argue that “[t]here is no language supporting the theory that mere notice to the Assessor, in whatever form, would somehow ‘reactivate’ the original application.” To the contrary, WAC 458-16A-150(3)(e) indicates the actions that the assessor may take when “the application information relied upon becomes erroneous.” including permitting the “county treasurer to collect any unpaid property taxes and interest from the claimant, [or] the claimant’s estate...” (emphasis supplied). This same section provides that “[i]f the change in status results in a refund of property taxes, the treasurer may refund property taxes and interest for up to the most recent three years after the taxes were paid...” (emphasis supplied). Contrary to the assessor’s contention, the mere knowledge by the assessor that a “change in status” has occurred, even without a formal notification, permits the treasurer to collect additional taxes, or to refund taxes overpaid.

The assessor argues that “the legislature simply did not contemplate that the person filing the application might be an heir who could not independently qualify.” Respondent’s Brief at 10-11. She also maintains that “nowhere does the statute extend a monetary benefit to the senior person’s estate or heirs after their death.” Respondent’s Brief at 8. But RCW 84.69.030(1) specifically permits a person’s executor to verify a refund claim, RCW 84.69.090 permits refunds to be paid to an executor,

and WAC 458-16A-150(2) provides that “in some circumstances, the change in status form may be submitted by an executor...” The statutory scheme and regulations, taken as a whole, clearly indicate that heirs are entitled to the benefit of the senior citizen exemption that accrued during the lifetime of the senior citizen and may be refunded such amounts.

The assessor argues that

“the interpretation Appellants propose would yield an absurd result. In contravention of the clearly stated purpose of tax exemptions, it would place a burden upon county assessors to inquire annually into the income of any senior citizen who has ever applied for a senior citizen tax exemption, shifting the burden of proving an exemption from the taxpayer to the County Assessor.” Respondent’s Brief at 2.

This argument is itself absurd. The co-executors clearly argue that additional reports must be submitted by the senior citizen in the case of an income change affecting eligibility. Appellants’ Brief at 23. See also WAC 458-16A-150(2) (requiring a change in status form whenever anything changes that “affects his or her exemption.”) No annual inquiry by the assessor is needed because the law places the burden of filing a change of status form on the senior citizen whenever the situation changes. Furthermore, renewal applications are required every four years. WAC 458-16A-150(2).

B. THE ASSESSOR'S CITATION OF A REPEALED REGULATION AND A 37 YEAR OLD ATTORNEY GENERAL'S OPINION ARE UNAVAILING

The assessor cites WAC 458-16-070 and alleges that the “Washington Administrative Code amplifies the personal nature of the exemption.” The regulation purports to consider the exemption “claimed when the tax is paid,” going on to state that “it shall cease to exist and be cancelled upon transfer of the property or upon the claimant’s demise,” and that in such case any taxes not yet paid “shall be levied and collected without consideration of the exemption...” Respondents’ Brief at 8.

This regulation is fundamentally inconsistent with the pro ration requirements of RCW 84.40.360 which was amended by 1984 Wash. Laws c. 220 §14. Under the repealed WAC 458-16-070, heirs and purchasers of property would receive the benefit of the senior citizen exemption for periods after the death of the senior citizen or the sale of that person’s residence, as long as the tax had been paid beforehand. On the other hand, in cases where the tax had not been paid, all of the periods for which the tax remained unpaid became subject to a higher rate without the exemption. No pro ration was to be done in either case, everything was dependent on whether or not the taxes had been paid. Compare WAC 458-16A-150(3)(f) (providing for pro ration from the date of a change in status), Exhibit C, fourth page, third question (taxes are pro rated in the

event of sale), Exhibit D, third page, under “Death of the Applicant” (taxes are pro rated in the event of death).

In 2003, before the co-executors filed for a refund, but after Mrs. Crawford’s death, WAC 458-16-070 was repealed, the accompanying text indicating that “[t]his change is consistent with other property tax exemptions and the statutory direction of RCW 84.40.360.” (emphasis supplied). See Wash. St. Reg. 03-03-099, Proposed Rules, filed January 17, 2003, Appellant’s Brief at 42-44. The regulation had long before been rendered null and void by the 1984 enactment. See Smith v. Northern Pacific Railway Co., 7 Wash. 2d 652, 664, 110 P.2d 851 (1941) (en banc) (“[s]tatutes may not be amended by administrative construction”).

The assessor also argues that “the exact issue of this appeal was addressed in 1971 Op. Atty Gen. No. 31...” Respondent’s Brief at 11. But, a review of this opinion indicates that the statutory scheme 37 years ago was vastly different, and that in fact a different issue was addressed by the opinion. The question presented is set forth on the first page:

“When a person who is qualified for the real property tax exemption under the provisions of §§ 4 and 5, chapter 288, Laws of 1971, 1st Ex. Sess., timely files his claim for it but thereafter dies or sells the property upon which he resides prior to the time the taxes to which the exemption applies become payable, do his heirs or other new owners of the subject property receive the benefit of the exemption?”

Clearly, the question presented is not the one at issue in the instant case. In the situation addressed by the attorney general, the property was not owned or occupied by the senior citizen at the time that the taxes became payable. Thus there was no period of time during which the senior citizen owned and occupied the property covered by the taxes to be paid. An affirmative answer to the hypothetical question would permit the heirs or grantees of a senior citizen to benefit from an entire year's worth of taxes at a reduced rate, even though the property did not meet the ownership and occupancy requirements on the first day of the period.

The situation in the instant case is the opposite of that addressed by the Attorney General's opinion. In the instant case, Mrs. Crawford failed to provide updated income information, and the property was taxed at a higher rate during the time that she was alive and occupying the property. She neither presented the updated change of status information before the taxes became payable, nor did she cease to occupy the property prior to the taxes becoming payable.

The attorney general was concerned with heirs and grantees of the senior citizen benefiting from the exemption for years in which the senior citizen neither owned nor occupied the property. He did not address the issue of whether the benefit of exemptions that accrued while the senior citizen was alive and occupying the property could inure to the benefit of

the heirs. The issue was whether the exemption continued to permit taxation at a lower rate after the death or transfer of property, not whether the heirs could receive a refund because the property had been taxed at too high a rate during the time that the senior citizen was alive and occupying the property.

C. THE ASSESSOR MISCONSTRUES THE CO-EXECUTORS' ARGUMENTS, COLLAPSING FOUR DISTINCT ISSUES INTO ONE

The assessor argues that “[t]he heirs assert four errors; however, all relate to the same issue: whether or not the term ‘and thereafter’ in the statute that describes the tax exemption application process, allows a tax exemption to exist in perpetuity...” Respondent’s Brief at 1. But, an examination of the co-executors brief indicates that only the first assignment of error relates to this issue. See Appellants’ Brief at 8-10. The assessor fails completely to address the second and third assignments of error. First, she fails to address the co-executors’ argument that, in the alternative, the phrase “time of filing” must be construed to mean the time that the application should have been filed. Second, she fails to address the co-executors’ argument that the statute must be construed in light of common law and a statutory requirement that causes of action survive for the benefit of heirs.

The Washington Department of Revenue has, in a publication related to the exemption, adopted a construction of the statute that requires that, when refunds are sought, “[y]ou must meet all of the qualifications for the exemption as if you had applied at the time the application was due.” (emphasis supplied) Exhibit C², third page, under the heading “Refunds for Prior Years.” See also Appellants’ Brief at 29-33. A literal “time of filing” requirement cannot be squared with other statutory language permitting refunds up to 3 years after an application was due. It was specifically rejected in Attorney General’s Opinion (“AGO”) 1969 No. 21. See Appellants’ Brief at 29-34.

Furthermore, a literal construction of the “time of filing” requirement would permit senior citizens applying at age 63 to receive refunds going back 3 years, even though during some of those years the age requirement was not met. See Appellants’ Brief at 25-28. The co-executors need not demonstrate that the assessors’ construction would be absurd in their case; they only need point to absurd results under a hypothetical situation. See Ski Acres v. Kittitas County, 118 Wn.2d 852 (1992) (en banc) (rejecting proposed construction of statute because of

² Since the filing of Appellants’ Brief, or at least after the site was last visited shortly before on August 21, 2008, the document at the URL from which Exhibit C was obtained, http://www.dor.wa.gov/Docs/Pubs/Prop_Tax/SeniorExempt.pdf was replaced by a very similar one dated 8/08. There appear to be only minor changes, some relating to domestic partnerships. The “Refunds for Prior Years” section remains unchanged.

absurd consequences, including requiring renters of video cassettes to pay a tax on admission to neighborhood grocery stores).

Nor does the assessor address the co-executors' common law and statutory arguments that causes of action, except in situations not applicable here, survive for the benefit of heirs. Since nothing in the statutory scheme provides that heirs lose the right to a cause of action that a senior citizen had during life, the senior citizen exemption statutes must be construed in conformity with the common law and statutory provisions. Appellants' Brief at 48-50.

The assessor argues that strict construction of the senior citizen exemption is required. Respondent's Brief at 5. However, there is no dispute that Mrs. Crawford was entitled to the benefit of the senior citizen exemption for the time that she was alive and occupying the property. Appellants' Brief at 46. The issue is not entitlement to the exemption itself, but rather entitlement to the fruits of the exemption.

The distinction between the scope of the senior citizen exemption and the "manner of obtaining the fruits of the exemption" was made in AGO 1969 No. 21 at 11. The situation in that case was analogous to the one in the instant case. At that time, certain senior citizens were allowed an exemption of \$50 from property taxes, but, according to the filing statute, had to file for the exemption between February 15 and April 30. A

separate refund statute permitted refund applications to be filed as late as October 30. Nevertheless, the Washington Attorney General rejected strict construction of the filing statute, instead construing the filing and refund statutes together, and establishing October 30, not April 30, as the deadline.

D. THE ASSESSOR MISCONSTRUES THE REQUIREMENTS OF EQUAL PROTECTION, AND MISSTATES THE CO-EXECUTORS' ARGUMENT

The assessor argues that “[t]he doctrine of equal protection guarantees only that similarly situated persons receive like treatment under the law.” Respondent’s Brief at 12-13. Such an assertion turns the equal protection clause on its head by focusing within the class rather than on the varying treatment of two different classes of members. The co-executors acknowledge that their assertion of unequal treatment must be evaluated based on the rational relationship test. The correct criteria is therefore that:

“A legislative enactment survives a constitutional challenge under minimum scrutiny analysis if '(1) . . . the legislation applies alike to all members within the designated class; (2) . . . there are reasonable grounds to distinguish between those within and those without the class; and (3) . . . the classification has a rational relationship to the proper purpose of the legislation.’” DeYoung v. Providence Medical Ctr., 136 Wn.2d 136, 144 (1998).

The essence of equal protection is that disparate classes of persons are treated differently under the law without there being a rational basis for doing so. Hooper v. Bernalillo County Assessor, 472 U.S. 612, 618 (1985). Here, the co-executors do not argue that senior citizens and their heirs are treated differently, but rather that two classes of heirs are treated differently. The classes distinguished are (1) the class of heirs of senior citizens whose testator submitted updated income information prior to death, and (2) the class of heirs submitting such information after death. In both cases, no refund had been received by the senior citizen prior to death. In either case, the benefit of the exemption does not flow to the senior citizen. But, in the first case the heirs are entitled to a refund, in the second case they are not. Appellants' Brief at 51.

Understood in these terms, the stated legitimate objective of providing shelter to the senior citizen carries no weight. Shelter is not an issue because the senior citizen was deceased by the time that any refund would be paid. The shelter of the senior citizen is unaffected by the disparate policies.

E. THE ASSESSOR SIMILARLY MISSTATES THE CO-EXECUTORS' DUE PROCESS ARGUMENT

The assessor argues that “[a] tax refund based on a tax exemption that the heirs do not qualify for is not a protected benefit.” Respondent’s

Brief at 13. But the co-executors' do not argue that due process entitles them to a benefit that they would not otherwise receive. Rather, they argue that the Board of Tax Appeals and the Superior Court have legislated from the bench by ignoring statutory provisions permitting refunds to executors and considering the phrase "and thereafter" in RCW 84.36.381 to be a nullity.

While the assessor acknowledges that the senior citizen would have been entitled to the exemption if she had applied herself, she prohibits the heirs from obtaining what the senior citizen herself is undeniably entitled to: the benefit of the senior citizen exemption during the time that she was alive and occupying the property. Appellants' Brief at 46.

Since the statutes nowhere prohibit the benefit of the exemption, for the period of time when the senior citizen was alive and occupying the property, from passing to heirs, and indeed permit refunds to executors, the refusal of the assessor and the various judicial entities to construe the statute in accordance with its understandable meaning constitutes a denial of due process. Appellants' Brief at 53-54. This was not the situation in Board of Regents v. Roth, 408 U.S. 564 (1972) or Leis v. Flynt, 439 U.S.

438 (1979)³, both cited by the assessor. In the former case there was no property right because the employment contract had expired, in the latter case, there was no property right for attorneys appearing pro hac vice because there was no law granting that right.

Here, the statute does not encompass within its understandable meaning any provision preventing the heirs of senior citizens from enforcing the testator's rights. Any construction of the statute by the Washington courts or quasi-judicial agencies of the State of Washington is legislative, not judicial, in nature, and, thus far, has served to deny the co-executors their property without due process of law. See Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 226-227 (1908) (proceedings legislative in nature are not proceedings in court and cannot be given judicial effect).

In United States v. Carlton, 512 U.S. 26, 30-31 (1994) the Supreme Court upheld retroactive tax legislation against a due process challenge, but only because it was not harsh and oppressive, and because it furthered a legitimate legislative purpose by rational means. In the instant cases, the construction of the senior citizen exemption statute has had a harsh and oppressive effect upon the co-executors, as it has deprived them of a property right granted by statute, without any prior indication that the

³ Both of these cases are incorrectly cited in Respondent's Brief.

State of Washington would subsequently construe the statute to render that right null and void. It furthers no legitimate purpose by rational means as it arbitrarily permits heirs of senior citizens providing updated income information before death to collect a refund, while denying other heirs that same right when the updated income information was provided after death.

F. PROVISION OF SHELTER IS NO LONGER A STATED PURPOSE OF THE SENIOR CITIZEN PROPERTY TAX EXEMPTION

The assessor cites AGO 1971 No. 31 and the legislative purpose cited therein to support her position. Respondent's Brief at 11. But the statute that the opinion cites, RCW 84.36.125, has been repealed. The legislative purpose is now set forth in RCW 84.36.379. See Respondent's Brief at 6. That statute refers to ability to pay, not to senior citizens becoming a burden government if they must move. The assessor nevertheless argues that "[t]he qualifications [for the senior citizen exemption] revolve in every aspect around a senior's ability to maintain shelter – not to preserve income." Respondents' Brief at 7.

The legislative history of SHB 496 indicates that, by 1983, the legislative concern had more to do with income than the provision of shelter. Exhibit F at 132 (referring to the "income gap between senior citizens and other homeowners" and noting four increases in income

limitations and the size of benefits “in order to protect beneficiaries from inflation”).

The assessor’s reading into RCW 84.36.381 of a purported intent to provide shelter is unavailing. RCW 84.36.381(1) requires occupancy of the property; the second “PROVIDED” sets forth an exception to that requirement for certain senior citizens in nursing homes, and in no way indicates a legislative intent to declare nursing homes to be adequate shelter. Respondent’s Brief at 7-8.

Further evidence that the legislature intended the senior citizen exemption to compensate for the lower income of senior citizens is contained in RCW 84.36.381(5)(b)(ii) which, for persons with income of less than \$18,000 per year⁴, provides an exemption on 60 percent of a property’s value, without any limitation as to the value of the property. There is also no limitation on the senior citizen’s net worth in the statute. If the legislature had intended a benefit only to senior citizens living in minimally adequate homes and facing foreclosure due to inability to pay, it would have enacted a different statute. See Appellant’s Brief at 36-37.

The legislature could have created tighter eligibility requirements as to income, net worth, and property value. But, it did not, indicating that it intended to benefit senior citizens well into the middle income ranges, in

⁴ Increased to \$25,000 in 2005.

order to protect their reduced incomes after retirement from being sapped by taxes on inflating property values. The legislature also knew how to recoup the benefit of the exemption from heirs upon the demise of the senior citizen, but, for senior citizens with incomes of less than \$30,000 in 2002, did not do so. Compare RCW 84.38 (providing for deferral of property taxes, with the deferred taxes becoming due upon the death of the senior citizen). The assessor's arguments amount to little more than a disguised attempt to have this Court ignore the plain statutory language and deny the co-executors the benefit of the exemption because to do otherwise would be contrary to the assessor's sense of fairness, which she disingenuously reads into the legislative intent.

G. THE ASSESSOR MISCHARACTERIZES THE RECORD AND STATUTES TO SUGGEST THAT MRS. CRAWFORD AND HER HEIRS ARE UNWORTHY OF THE EXEMPTION

The assessor refers to the exemption as the "senior citizen low-income tax exemption." See Respondent's Brief at 1. But, nothing in the statutes or regulations uses the adjective "low-income." See WAC 458-16A-100 (referring to the exemption as the "[s]enior citizen, disabled person, and one hundred percent disabled veteran exemption...") The assessor also refers to Mrs. Crawford "or her financial advisors..." Respondent's Brief at 1. Nothing in the record refers to Mrs. Crawford having any financial advisors.

H. THE PERTINENT FACTS ARE UNDISPUTED ONLY BECAUSE THE ASSESSOR ABANDONED THE LIFE ESTATE ISSUE

In Appellants' Brief at 19, the co-executors indicate that the pertinent facts are undisputed because the assessor abandoned her prior position on the life estate issue and the Superior Court therefore did not consider the Board of Tax Appeals' clearly erroneous findings on this issue. Respondent's Brief does not deny that this issue has been abandoned or refer to the portion of the Board of Tax Appeals' decision relying on the absence of a qualifying life estate. Therefore, this Court need not consider the life estate issue. The pertinent facts are undisputed only because the erroneous findings of the Board of Tax Appeals relate solely to the abandoned life estate issue. See Appellants' Brief at 38-41.

I. THE ASSESSOR FALSELY ALLEGES A CONSISTENCY IN PRIOR DECISIONS

The assessor maintains that "all courts have agreed on the central issue that the benefits of the senior tax exemption are personal in nature, and are not intended to inure to the benefit of the heirs of an estate." Respondent's Brief at 3. To the contrary, there are varying reasons for denial of the exemption indicated in the various opinions, demonstrating that there is no solid legal foundation to these determinations.

The Board of Equalization's decision determined that "[t]he intent of the law would appear to be that the benefits of the Senior

Citizen/Disabled Person tax exemption accrue to the Senior Citizen/Disabled Person.” Exhibit N at A17-1. This is the only decision referring to any personal nature of the exemption.

The Board of Tax Appeals did not address the legislative intent, rather it based its decision entirely upon the text of RCW 84.36.381 (ignoring its discussion of the abandoned life estate issue), and did not consider any of the other statutes making up the statutory scheme. Exhibit A at 6. It determined that the statute requires both ownership and occupancy at the time of ownership, and that those requirements had not been met.

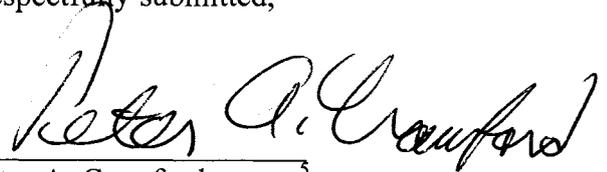
The Superior Court’s decision was similar to that of the Board of Tax Appeals. It also did not address the legislative intent. Rather it adopted the Board of Tax Appeals requirement of occupation and ownership at the time of filing, and rejected the co-executors’ argument that only a single filing was ever needed. Exhibit U at 2.

V. CONCLUSION

The assessor has failed to address many of the arguments in Appellants’ Brief, including the statutory and common law requirements that causes of action inure to the benefit of heirs. She has cited a repealed regulation, a repealed statute, and ignored the pro ration requirements that

have been the law in Washington since 1984. The Superior Court should be reversed and the benefit of the exemption awarded to the co-executors for the period of time while Mrs. Crawford was alive and occupying the property, together with interest and costs, and with the valuation returned to its original level as required by RCW 84.36.381(6).

Respectfully submitted,



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Date: 3 Nov. 2008

⁵ Because of time constraints, Ms. Miles, the other co-executor, has not had the opportunity to review and sign this brief, as she did Appellant's Brief.

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DIVISION II

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STATE OF WASHINGTON
BY _____
DEPUTY _____

WASHINGTON STATE COURT OF APPEALS
Division Two

PETER A. CRAWFORD,)
DEBORAH C. MILES,)
co-trustees and co-executors)
)
Petitioners,)
Appellants)
)
v.)
)
LINDA FRANKLIN)
Clark County Assessor,)
)
Respondent,)
Appellee)

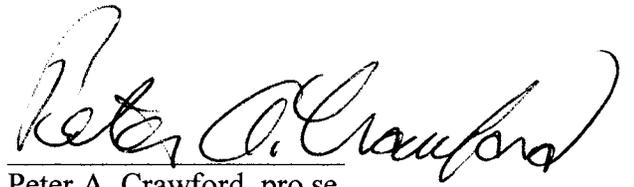
No. 37902-3-II

APPELLANTS' CERTIFICATE OF SERVICE

I, Peter A. Crawford, hereby certify that on this the 3rd day of November, 2008, I deposited a true and correct copy of the Reply Brief of Appellants into the mails of the U.S. Postal Service, postage prepaid, directed to attorney for Appellee at the following address:

Lori Volkman
Deputy Prosecuting Attorney
Clark County Prosecuting Attorney
Civil Division
604 W. Evergreen Blvd.
P.O. Box 5000
Vancouver, WA 98666-5000

Place: Nashua, NH

A handwritten signature in cursive script, reading "Peter A. Crawford". The signature is written in black ink on a white background.

Peter A. Crawford, pro se
23 Newcastle Dr. #11
Nashua, NH 03060