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COURT OF APPEALS
DIVISION II

37902-3-II

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STATE OF WASHINGTON
BY _____

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

PETER A. CRAWFORD and DEBORAH C. MILES, co-trustees and co-executors, Appellants,

v.

LINDA FRANKLIN, Clark County Assessor, Respondent.

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CAUSE NO. 05-2-05413-5

BRIEF OF RESPONDENT

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I. INTRODUCTION

At issue in this appeal is whether or not the Legislature intended to create a benefit for the heirs of an estate when it enacted a personal tax relief exemption to low-income senior citizens.

Appellants are heirs to Juliet Crawford, who applied for and received a senior citizen low-income tax exemption from 1995 through 1999. When her income exceeded \$30,000 in 2000, she became ineligible to receive the exemption in 2001. She or her financial advisors failed to apply for the exemption in 2002, Juliet Crawford passed away, and the property was sold. A year after her death, and eight months after the sale of the property, the heirs requested a refund of taxes under the low-income senior exemption, which was denied by the Clark County Assessor, upheld by the Clark County Board of Equalization, upheld by the Washington Board of Tax Appeals, and upheld by the Superior Court of Clark County before being brought to this Court of Appeals.

The 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, or whether it merely eliminates the need for an annual application *as long as* the applicant remains eligible for a tax exemption.

First, the statutes unambiguously describe the conditions under which reapplication for the exemption is required. The exemption was not intended to exist in perpetuity where the applicant no longer meets the exemption criteria, and it was intended to provide shelter for aging citizens with limited income, not monetary gain to the heirs of an estate.

Second, even if the statutes were unclear, both the legislative intent and the administrative codes enacted to implement the statute mirror the intent that the intended benefit is personal, and not intended to be utilized by heirs.

Third, 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.

The County Assessor therefore seeks an order upholding the denial of a senior citizen tax exemption to the heirs of Mrs. Crawford.

II. STATEMENT OF THE CASE

A. Facts.

Respondent adopts Appellants' Stipulated Facts, found in Appellants' opening brief at pages 12 – 14.

B. Prior Proceedings.

On or about February 2, 2004, the Clark County Assessor denied the heirs' request for a refund of taxes under the senior citizen tax exemption statute, RCW 84.36.379. The heirs timely appealed to the Clark County Board of Equalization. The refund denial was affirmed on July 15, 2004. The heirs timely appealed to the Washington State Board of Tax Appeals. The refund denial was affirmed again on September 19, 2005. The heirs then appealed to the Clark County Superior Court. The refund denial was affirmed by that court on March 14, 2007, and a subsequent Motion for Reconsideration was denied on June 3, 2008. The heirs then timely filed this appeal to the Washington Court of Appeals.

The reasoning of the decisions have varied as to minor points, however 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.

III. STATEMENT OF ISSUES

The Clark County Assessor presents the following issues:

- A. Did the Legislature intend that tax relief exemptions for low-income senior citizens accrue personally, or did they also intend that it benefit a taxpayer's heirs?
- B. Was a tax exemption for low-income senior citizens properly denied to the heirs of Mrs. Juliet Crawford after her death and the sale of her property?

IV. STANDARD OF REVIEW

- A. Facts.

Chapter 34.05 RCW, the Administrative Procedures Act, governs appeals from the BTA. *UPS, Inc. v. Dept. of Rev.*, 102 Wn.2d 355, 360, 687 P.2d 186 (1984). However the heirs do not challenge any findings of fact, stating "the pertinent facts are undisputed." Appellant's Brief, p. 6. Therefore on appeal, the facts are considered verities. *Tapper v. Empl. Sec. Dept.*, 122 Wn.2d 397, 407, 858 P.2d 494 (1993).

- B. Law.

When reviewing a question of law under the APA, the appellate court grants relief if the agency "erroneously interpreted or applied the law." RCW 34.05.570(3)(d). Therefore, review is de novo. *Enter. Leasing, Inc. v. City of Tacoma*, 139 Wn.2d 546, 551, 988 P.2d 961 (1999). This standard does not change when the BTA's decision has been appealed to the Superior Court. *City of Spokane v. Dept. of Revenue*, 145 Wn.2d 445,

451, 38 P.3d 1010 (2002). The heirs retain the burden of showing that the BTA's decision was erroneous. RCW 34.05.570(1)(a).

V. ARGUMENT

A. The legislature did not intend that tax relief exemptions for low-income senior citizens accrue to benefit a taxpayer's heirs under RCW 84.36.379 et seq.

1. **The plain statutory language supports a denial of the tax exemption to the heirs.**

In general, if the meaning of a statute is plain, the court discerns legislative intent from the ordinary meaning of the words. *Burns v. City of Seattle*, 161 Wn.2d 129, 140, 164 P.3d 475 (2007). Statutes exempting property from taxation are strictly construed in keeping with the ordinary meaning of the language employed. WAC 458-16-100(2)(c). If there is any doubt regarding the exact meaning of a statute exempting property from taxation, the statute is construed in favor of the power to tax and against the person claiming the exemption because taxation is the rule and exemption is the exception. WAC 458-16-100(2)(d). The mere fact that two interpretations are conceivable does not make a statute ambiguous. *Agrilink Foods, Inc. v. Dept. of Revenue*, 153 Wn.2d 392, 396, 103 P.3d 1226 (2005).

The purpose of the senior tax exemption is to preserve shelter for those with reduced incomes:

The legislature finds that the property tax exemption authorized by Article VII, section 10 of the state Constitution should be made available on the basis of a retired person's ability to pay property taxes. The legislature further finds that the best measure of a retired person's ability to pay taxes is that person's disposable income as defined in RCW 84.36.383.

RCW 84.36.379 (2000)¹. A person's ability to pay the tax because of a reduced income stream after retirement is the basis for the exemption. Otherwise, retired persons who own their homes might risk the foreclosure of their property for failure to pay taxes. RCW chapter 84.64. Protection of an elderly person's shelter is no longer a concern when the person has passed away.

The specific qualifications crafted by the legislature bear out their intent that the exemption is intended to aid seniors in maintaining shelter:

A person shall be exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the year following the year in which a claim is filed, and thereafter, in accordance with the following:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of the time of filing:

¹ All statutory references are to the laws in effect on November 17, 2003 when the heirs submitted their request for an exemption to the Clark County Assessor. Where statutory changes affect this decision, they are specifically discussed.

PROVIDED, that any person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant shall receive an exemption on more than one residence in any year: PROVIDED FURTHER, That confinement of the person to a hospital or nursing home shall not disqualify the claim of exemption if:

- (a) The residence is temporarily unoccupied;
- (b) the residence is occupied by a spouse and/or a person financially dependent on the claimant for support; or
- (c) The residence is rented for the purpose of paying nursing home or hospital costs;

(2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this subsection, a residence owned by a marital community or owned by cotenants shall be deemed to be owned by each spouse or cotenant, and any lease for life shall be deemed a life estate.

(3) The person claiming the exemption must be sixty-one years of age or older on December 31st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of physical disability: PROVIDED, That any surviving spouse of a person who was receiving an exemption at the time of the person's death shall qualify if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this section;

RCW 84.36.381 (1)-(3) (1998).

The qualifications revolve in every aspect around a senior's ability to maintain shelter – not to preserve income. For example, the statute allows a senior to maintain their tax exempt status even if they move to a

nursing home, but only if there is intent to return to the property, or where the property is providing income necessary to pay for their shelter. Otherwise, the nursing home is deemed sufficient shelter and the senior is no longer eligible for the exemption, even if the nursing home costs more than the taxes due. The consideration made is one for shelter, not income. And although there are provisions providing for the shelter of spouses, roommates, and cotenants of qualifying seniors who have died, nowhere does the statute extend a monetary benefit to the senior person's estate or heirs after their death.

The Washington Administrative Code amplifies the personal nature of the exemption:

As the exemption contained in WAC 458-16-010 through 459-16-079 is a personal exemption and is considered claimed when the tax is paid, it shall cease to exist and be cancelled upon transfer of the property or upon the claimant's demise. In such a case, any previous years or portion of that year's taxes due and/or owing in the year of the canceling event which have not yet been paid shall be levied and collected without consideration of the exemption
...

WAC 458-16-070.

Even assuming the statute was intended to provide money for heirs, the heirs' argument 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 reapply under the existing exemption, even though it has ceased to exist. They 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. However, this reading is not consistent with the unambiguous requirements drafted by the legislature:

(1) A claim for exemption under RCW 84.36.381 as now or hereafter amended, shall be made and filed at any time during the year for exemption from taxes payable the following year and thereafter and solely upon forms as prescribed and furnished by the department of revenue. However, an exemption from tax under RCW 84.36.381 shall continue for no more than four years unless a renewal application is filed as provided in subsection (3) of this section. The county assessor may also require, by written notice, a renewal application following an amendment of the income requirements set forth in RCW 84.36.381. Renewal applications shall be on forms prescribed and furnished by the department of revenue.

(2) A person granted an exemption under RCW 84.36.381 shall inform the county assessor of any change in status affecting the person's entitlement to the exemption on forms prescribed and furnished by the department of revenue.

RCW 84.36.385 (1) – (2) (2001). First, the legislature clearly states that no application survives a period of more than four years without reapplication, so the exemption cannot be applied in perpetuity. Second, the burden lies upon the person granted the exemption to report a change

in status affecting their “entitlement to the exemption.” It does not provide for such notice for a “return to entitlement to the exemption” after they have already been disqualified.

Notwithstanding the clear statutory language, the administrative code governing senior tax exemptions is also consistent with the concept that a new application is required. It clearly states:

Failure to submit the renewal application. If the property owner fails to submit the renewal application form, the exemption is discontinued until the claimant reapplies for the program. The assessor may postpone collection activities and continue to work with an eligible claimant to complete an application for a missed period.

WAC 458-16A-150(f). There is no language supporting the theory that mere notice to the Assessor, in whatever form, would somehow “reactivate” the original application. On the contrary, the WAC clearly states “the exemption is discontinued until the claimant reapplies.” This is consistent with the well-established rule that the burden for establishing a tax exemption lies squarely with the person claiming the exemption. *In re Sehome Park Care Center, Inc.*, 127 Wn.2d 774, 903 P.2d 443 (1995).

The heirs oddly construe some kind of unstated intent in the legislature’s use of the terms “apply” and “reapply.” No statute supports the heirs “relation back” theory because the legislature simply did not contemplate that the person filing the application might be an heir who

could not independently qualify. The legislature contemplated preserving shelter to the low income senior citizen, not preserving funds for the heirs of an estate. The unambiguous statutes and codes bear this out.

2. Agency interpretations support the personal nature of the tax exemption.

This is a case of first impression: the ability of an heir to qualify for a senior citizen tax exemption of a deceased taxpayer under RCW 84.36.381 has not been decided by an appellate court.

However, the exact issue of this appeal was addressed in 1971 Op. Atty Gen. No. 31 when it reviewed whether or not the senior citizen tax exemption was intended to benefit a tax exemption claimant's heirs. As a cornerstone of its analysis, the opinion examines the legislative history of the statutes, including the original legislative purpose for the exemption:

Due to the tremendous rise in living costs during the past decade, including increased property taxes, the failure of federal old age and survivors insurance and similar types of pension systems to adequately reflect in their pension payments these costs, and because savings once deemed adequate for retirement living are now grossly inadequate, it is therefore deemed necessary that the legislature now grant people retired on fixed incomes some relief from real property taxes. This relief must be granted to insure that thousands of persons now retired on fixed incomes can remain in possession of their homes, thus not becoming a burden on state or local government.

1971 Op. Atty. Gen. 31, p. 8, (citing RCW 84.36.125 (1965)). The opinion comes to the conclusion that the exemption should not accrue to the heirs when it states: “The exemption is intended to be a personal one, afforded only to those able to meet all of the statutory conditions and who file a claim therefore. The act is not designed to be of benefit to the heirs or grantees of the person entitled to the exemption.” *Id.*

- B. As applied to Mrs. Crawford’s heirs, the denial of a tax exemption intended for low-income senior citizens was proper.

The stipulated facts confirm that Mrs. Crawford did not apply for an exemption in 2002 prior to her death, that she was deceased by the time application was made in 2003, that application was not made by Mrs. Crawford, but by her heirs, and that by the time the application was made the property had been sold. Therefore, it was impossible for Mrs. Crawford to meet the statutory requirements for the exemption, and under the statutory reading proposed by this brief, the denial of a senior citizen tax exemption for Mrs. Crawford’s heirs was proper.

Following this agency interpretation, there is no basis at law for the heirs’ position that extinguishing the right to a tax exemption upon death somehow discriminates against the heirs of that person, when the heirs cannot independently qualify for the exemption. The doctrine of equal

protection guarantees only that similarly situated persons receive like treatment under the law. *O'Hartigan v. Dept. of Pers.*, 118 Wn.2d 111, 121, 821 P.2d 44 (1991). Low-income senior citizens and heirs of an estate are not similarly situated persons. Even if they were somehow classified in a similar manner, a statute is unconstitutional only if it classifies those groups on grounds wholly irrelevant to the achievement of a legitimate state objective. *DeYoung v. Providence Med. Ctr.*, 136 Wn.2d 136, 144, 960 P.2d 919 (1998). The legitimate state objective is the provision of shelter, which necessarily extinguishes upon death. Where there is a conceivable legitimate objective, it need not have motivated the legislature or be supported by evidence or empirical data. *Haberman v. Wash. Pub. Power Supply Sys.*, 109 Wn.2d 107, 140, 744 P.2d 1032, 750 P.2d 254 (1987).

In addition, the heirs' claim of a procedural due process violation is misplaced. A tax refund based on a tax exemption that the heirs do not qualify for is not a protected benefit. *Board of Regents v. Roth*, 408 U.S. 438 (1979). Constitutional protection is not extended to an abstract need or desire for a benefit; there must be a legitimate claim to the benefit. *Leis v. Flynt*, 432 U.S. 438 (1979).

VI. CONCLUSION

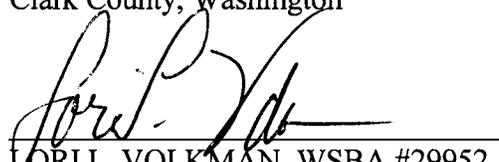
The Board of Tax Appeals appropriately concluded that Mrs. Crawford did not occupy or own the subject property at the time application was made for the senior exemption and therefore the heirs were not eligible for a tax refund. That conclusion is supported by the record, the stipulated facts, an application of law based on the unambiguous language of the statute, as well as the intent that the exemption be applied as a measure to preserve shelter for the elderly, not a monetary benefit for the heirs of an estate.

The Clark County Assessor requests that this Court uphold the decision of the Washington State Board of Tax Appeals, in finding that the heirs of Mrs. Crawford are not eligible to receive the benefits of a tax exemption intended to benefit low-income senior citizens, and therefore their request for a tax refund was properly denied.

Respectfully submitted:

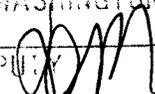
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Appellants,

v.

LINDA FRANKLIN, Clark County Assessor,

Respondent.

No. 37902-3-II

AFFIDAVIT OF MAILING

The undersigned, being first duly sworn, upon oath, deposes and says:

That I am a citizen of the United States of America and of the State of Washington, living and residing in Clark County, in said state; that I am over the age of 21 years, not a party to the above-entitled action and competent to be a witness therein; that on the 9th day of October, 2008, affiant caused to be served a true and correct copy of the following:

1. Brief of Respondent;
2. Affidavit of Mailing;
3. Notice of Appearance; and
4. Notice of Substitution of Counsel

upon the following at the address as stated below by the method of service indicated:

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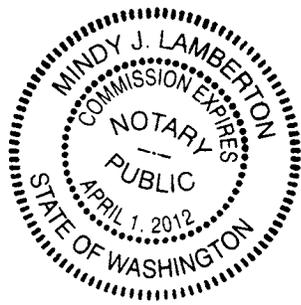
Peter A. Crawford
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Deborah C. Miles
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Camas, WA 98607

Joe L. Miles

SUBSCRIBED AND SWORN to before me this 9th day of October, 2008.



Mindy Lambert
NOTARY PUBLIC in and for the State of
Washington, residing in Vancouver.
My commission expires: 4-1-2012