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PHOENIX, ARIZONA

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DEPARTMENT OF LAW LETTER OPINION NO. 65-7-L (R-69)

REQUESTED BY: The Honorable R. Larry Oldham
House of Representatives

QUESTION: May the State Tax Commission require all persons who own personal property purportedly exempt under the provisions of Article 9, Section 2 of the Constitution of Arizona as inventories, to file with the County Assessors an affidavit stating the amount of the property and the statement of the property owner and affiant that to the best of his knowledge and belief the property is exempt from ad valorem taxation?

ANSWER: Yes.

Under the provisions of A. R. S. 42-272:

"The state tax commission shall prescribe the procedure, affidavits and forms required to carry into effect tax exemptions on property specified in section 2, article 9, constitution of Arizona."

The State Tax Commission has followed the clear mandate of this law and specified an exemption affidavit form. This office has approved the form as fulfilling the requirements of the law. However, it is not solely on the bare wording of the statute that we rely. The Supreme Court of this state had this precise question before it in State v. Allred, 67 Ariz. 320, 195 P. 2d 163 (1948). The Court took into consideration the fact that the constitutional provision is by its own language self-executing, and also the fact that it had previously held that such affidavits were not required.

In a detailed and thorough opinion by Justice Udall, the Court reversed the earlier cases, held that affidavits were required and affirmed a tax sale of property owned by a veteran who failed to pay taxes or file an affidavit for one year, 1932, even though he had filed his affidavit for every subsequent year. The statutes in effect at the time of the decision have not been altered in any substantive manner since.

It has been suggested that such procedure is cumbersome, expensive and unnecessary. It must be kept in mind, however, that not all personal property owned by a person who has inventory property is exempt. Some property such as store fixtures are assessable as personal property. An assessor has an inherent as well as a statutory right to ascertain for himself the true nature of the property claimed to be exempt, whether such exemption arises from the status of the person, such as widow or veteran, or the nature of the property. If the legislature decides that such forms are not necessary, that is a legislative prerogative. But under the present state of the law, it would be flying directly in the face of a clear statutory mandate and a decision of the Supreme Court to hold anything other than that the affidavit required by the Tax Commission must be filed before the exemption will be held not to have been waived.

The above is applicable to taxation of such property as secured personal property which is assessed between January 1 and April 30 of each year. Unsecured personal property is assessed on a monthly basis and the same affidavit can be used when the taxpayer receives his notice of assessment under A. R. S. 42-601 through 617.

Respectfully submitted,

Darrell F. Smith

DARRELL F. SMITH
The Attorney General

PMH: DS:bh