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May 6, 1970

DEPARTMENT OF LAW OPINION NO. 70-11 (R-51)

REQUESTED BY: THE HONORABLE ROSE SILVER
Pima County Attorney

QUESTION: Would a widow be entitled to a real property tax exemption where she lives in a house which is owned one-fourth in fee simple by the widow and three-fourths in fee simple by the widow's son, who with his family lives in the same house, and the son's income exceeds the amount allowed by Article 9, § 2, of the Constitution, attributable to one claiming the widow's exemption?

ANSWER: See body of opinion.

In answering this question we assume that, except as stated in the question, the widow qualifies for the exemption. We therefore assume that the value of the widow's interest in the house is less than \$5,000.00. The question raised involves the construction of the following portion of Article 9, § 2, of the Arizona Constitution:

"There shall be further exempt from taxation the property of each widow, resident of this state, not exceeding the amount of two thousand dollars, where the total assessment of such widow does not exceed five thousand dollars; provided, that the income from all sources of such widow, together with the income from all sources of all children of such widow residing with her in such widow's residence in the year immediately preceding the year for which such widow applies for exemption, did not exceed (1) \$3,500, if none of the widow's children under the age of twenty-one years resided with her in such widow's residence, or (2) \$5,000, if one or more of the widow's children residing with her in such widow's residence was

under the age of twenty-one years, or was totally and permanently disabled, physically or mentally, as certified by competent medical authority as provided by law; and provided, further that such widow resided with her last husband in this state at the time of his death if she was not a widow and a resident of this state prior to January 1, 1969.

"No property shall be exempt which has been conveyed to evade taxation. The total exemption from taxation granted to property owned by a person who qualifies for any exemption in accordance with the terms of this section 2(B) shall not exceed two thousand dollars. This section shall be self-executing."

The fact that the widow and her son own the property jointly does not bar the widow from claiming an exemption in respect to her portion, if she is otherwise entitled to exemption. In holding that the veteran's exemption could be claimed out of community property, the court pointed out that the interest of the husband and wife in the community estate are each vested and capable of being separated, and it is the duty of the County Assessor to assess the wife's undivided one-half interest in the property involved. Oglesby v. Poage, 45 Ariz. 23, 40 P.2d 90. Under the reasoning of that case, exemption from property taxes may properly be claimed by the person entitled to the exemption in respect to their share of the jointly owned property. The only exception is property which is not capable of being separated. In such a case payment of the tax cannot be enforced by tax sale. Accordingly, the widow is not barred from claiming exemption because the property is in part owned by someone else.

The next problem in connection with this question is whether or not the son's income in excess of the income limitation of Article 9, § 2, disqualifies the widow for the exemption. The portion of Article 9, § 2, pertaining to the income requirement is as follows:

". . . [P]rovided, that the income from all sources of such widow, together with the income from all sources of all children of such widow residing with her in such widow's residence in the year immediately preceding the year for which such widow applies for exemption, did not exceed"

In determining whether or not the facts assumed in the question disqualify the widow under this applicable language, we must follow certain principles of statutory construction which are applicable to tax exemptions statutes. A tax exemption must be granted in unequivocal terms. Weller v. City of Phoenix, 39 Ariz. 148, 4 P.2d 665; City of Phoenix v. Boles, 65 Ariz. 315, 180 P.2d 222. The presumption is always against tax exemptions, and laws exempting property from taxation are strictly construed. Conrad v. County of Maricopa, 40 Ariz. 390, 12 P.2d 613; Lois Grunow Memorial Clinic v. Oglesby, 42 Ariz. 98, 22 P.2d 1076; Verde Valley School v. County of Yavapai, 90 Ariz. 180, 367 P.2d 223.

The word "residence" may be used in the legal and technical sense to mean "domicile", or it may be used in its ordinary and practical sense to mean "the place where one lives". This is also true of its derivative "residing". Where the Legislature used the words "residing with her in such widow's residence", we think they intended to use the ordinary and practical meaning of the word "residing". The use of the words "in such widow's residence" are in conflict with the idea of domicile. For example, the widow's home could be the domicile of the son who was in the military service overseas, but in that event it would not be the place where he lived.

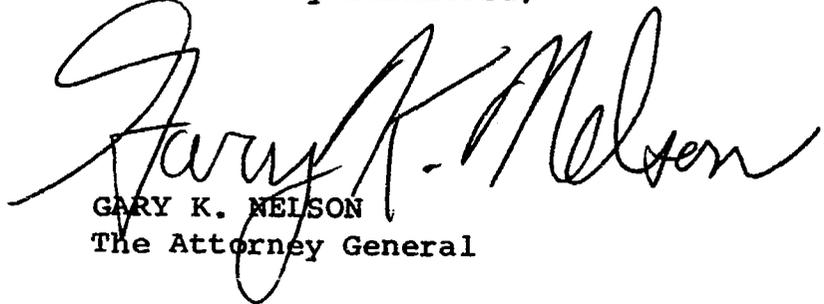
Whether or not one person resides with another in such person's residence is a question of fact. Because of the great variety of possible fact situations, it is not possible to formulate rules that will properly apply the law to every situation. All that we can do is to anticipate some of the more common situations. Persons living in separate apartments in the same house certainly do not have the

Opinion No. 70-11
(R-51)
May 6, 1970
Page Four

same residence. On the other hand, if a son and his family lived in the same house, commonly ate meals together with the widow and shared a living room with her, such a son would reside with the widow in her residence within the meaning of Article 9, § 2, and his income in excess of the amount specified in that section would disqualify her for the exemption.

The County Assessors are the exclusive arbiters of the facts, subject to review for abuse of discretion. Baldwin v. Rohrer, 105 Ariz. 49, 459 P.2d 309. Accordingly, they will have to resolve these fact questions on a case by case basis in accordance with the principles of law set out herein.

Respectfully submitted,



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The Attorney General

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