

JULY 5, 1961

MR. WILLIAM KINGSLEY
Acting Director, Division of Taxation
Department of the Treasury
State House
Trenton, New Jersey

FORMAL OPINION 1961—No. 12

DEAR MR. KINGSLEY:

You have asked our opinion as to various questions that have been raised with regard to the tax exemption for senior citizens recently authorized by constitutional amendment (Art. VIII, Sec. 1, par. 4) and implemented by Chapter 9 of the Laws of 1961 (N.J.S.A. 54:4-3.36, *et seq.*) In general, the constitutional provision and the statute allow exemptions from taxation of real property in an amount not exceeding \$800.00 for citizens and residents of this State aged 65 or more, who have incomes not in excess of \$5,000 per year. The exemption applies to the assessment on real property taxed locally throughout the state. Exemption applications are to be processed by local assessors. It is obviously desirable to have a uniform application of the law and for that reason we answer below a number of questions that have been specifically raised.

I

You have asked whether the income of a claimant's spouse or the income of other members of the claimant's family who reside in the same dwelling should be added to the income of the claimant for the purpose of measuring claimant's "income" against the \$5,000 limitation.

The act does not direct that income of the claimant should be combined with his or her spouse or other members of the family residing in the dwelling for the purpose of determining claimant's income. Section 2 of the act permits "[E]very person * * * having an income not in excess of \$5,000.00 per year" who meets other conditions to claim the exemption. Section 9 of the law specifically provides that, "property held by husband and wife, as tenants by the entirety, shall be deemed wholly owned by each tenant * * *." Therefore, either spouse is entitled to claim the exemption on the basis of his or her qualifications alone.

Consequently, the law as it presently stands would permit an \$800 exemption to a claimant wife whose income is less than \$5,000 per year but whose husband, for example, has an income of \$25,000 per year. However absurd this result may be, there is no provision in the statute which permits the combining of income in such cases.

The provision with respect to ownership of property by tenants by the entirety was apparently placed in the statute to avoid an interpretation which would require the husband and wife both to meet all the statutory conditions to obtain the exemption. For instance, one spouse may be 65 or more years of age and the other under 65 and still the exemption could be claimed by one spouse against the dwelling held in their names as husband and wife. Each spouse is expressly deemed the full owner of the property for the purpose of the exemption. It is this provision that emphasizes the conclusion that the income of the claimant alone as well as his other individual qualifications shall be considered apart from the income of his or her spouse.

Since the enactment of this law members of the Legislature have recognized this result. The Senate has passed Senate Bill No. 227 which would amend the law to the extent of providing that for the purposes of the Act the income of a husband shall be deemed to be the income of his wife in addition to her own income, and vice versa.

II

You have asked whether an individual claimant eligible to receive the senior citizen exemption of \$800 may also receive, in addition thereto, the \$500 veteran's exemption or any other exemption. Article VIII, section 1, paragraph 4 of the New Jersey Constitution (the amendment which authorizes the senior citizen exemption) adequately provides the answer to this question. The amendment reads in part as follows :

"Any such exemption when so granted by law, shall be granted so that it will not be in addition to any other exemption to which the said citizen and resident may be entitled."

Consequently, the citizen receiving the \$500 veteran's exemption would not be qualified to receive the \$800 exemption as well; the granting of the senior citizen exemption extinguishes his right to the veteran's exemption. This is so whether or not the veteran's exemption is applied in whole or in part to personal property, or to other real property owned by such claimant. This view was expressed by Senator Wayne Dumont, one of the sponsors of the constitutional amendment, at the public hearing prior to the passage of Senate Concurrent Resolution No. 12 (now Art. VIII, section 1, paragraph 4 of the New Jersey Constitution). On page 13 of the transcript of the aforementioned public hearing the Senator said:

"I know that SCR 12 says in effect that where a senior citizen is also a veteran, they cannot get both exemptions."

We are further persuaded to the conclusion that this was the legislative intent by the fact that on this subject another Senate Concurrent Resolution, SCR 4, was considered by the Legislature. SCR 4 provided that the \$800 exemption would be in *addition* to other exemptions. Since SCR 4 was not adopted, this fortifies the conclusion that the Legislature did not intend to allow more than the one exemption for any one claimant.

III

This provision does not bar a person from claiming a senior citizen exemption for the year 1961, even though he is already receiving a "standing" veteran's exemption of \$500 for the same year. Although N.J.S.A. 54:4-55 would prohibit the assessor from removing the veteran's exemption from the books, the assessor may allow the senior citizen an \$800 exemption credit for the year 1961 and debit the veteran's exemption of \$500 against the senior citizen exemption credit, L. 1961, c. 9, sections 5, 6. The veteran-senior citizen will receive for 1961 a credit determined as if he received an additional \$300 senior citizen exemption for that year alone.

IV

Chapter 9, Laws of 1961, section 2 provides that the exemption claimed by the senior citizen on the "dwelling house" owned by him and wherein he resides shall

not exceed \$800 *in the aggregate* "on such real property." That section further provides that "no such exemption shall be in addition to any other exemption to which said person may be entitled." Where the dwelling house is owned by husband and wife as tenants by the entirety, a claimant's wife, otherwise eligible, could not be allowed the full \$800 senior citizen exemption if her husband is receiving a veteran's exemption of \$500 on the dwelling owned by them. The husband can claim the \$500 veteran's exemption but the wife can only receive a \$300 senior citizen exemption on that house. This result is required since section 2 of the Act limits the exemption on any dwelling house to an assessed valuation of \$800 *in the aggregate*, where the senior citizen exemption is applied to that house. However, if the veteran's exemption is applied to personal property, the veteran's wife could receive the full senior citizen exemption on the dwelling house owned by them as tenants by the entirety. Also a wife can obtain the full \$800 senior citizen exemption on their dwelling house if the husband's veteran's exemption is applied to property other than the real property on which the dwelling house is located.

V

A claimant may obtain only one senior citizen exemption on but one dwelling house; this exemption may not be divided between two or more residences and the dwelling house must be the claimant's principal place of residence. Section 2 of the Act (Laws of 1961, Chapter 9) provides that a claimant "residing in a *dwelling house* owned by him * * * shall be entitled * * * to exemption from taxation on *such real property* * * *." (Emphasis supplied.) The statute intends that the exemption be on a dwelling house, not *dwelling houses*. By limiting the exemption from taxation to a single dwelling and by requiring claimant to be *domiciled* in New Jersey for 3 or more years, the Legislature expressed the intent that the exemption shall apply to but one dwelling of claimant for the purpose of this statute, the dwelling where claimant makes his principal and permanent home.

Thus, where a claimant resides in an apartment house which is his principal place of residence and occupies a cottage or bungalow during the summer months, the summer home cannot be considered as a dwelling house upon which claimant may receive this exemption.

In a situation where both the claimant and his wife meet all the prerequisites for exemption as persons 65 years or over and where the claimant owns one residence and his wife another, an exemption may be obtained only with respect to the dwelling house which constitutes the principal place of residence. The result is the same where the claimant and his wife, as tenants by the entirety, own two residences. An exemption may be claimed only on the dwelling house which constitutes the principal place of residence. One spouse may not claim the exemption on one house and the other spouse claim the exemption on the second house.

Further, the statute makes no reference to apportioning the tax among two or more properties. In the legislation allowing the veteran's exemption (N.J.S.A. 54:4-3.12p) there appears specific authorization for an apportionment:

"* * * but exemption may be claimed in any taxing district * * * and may be apportioned, at the claimant's option, between two or more taxing districts; * * *."

The absence of similar language in the senior citizen exemption statute compels us to conclude that the Legislature did not intend to allow the senior citizen exemption to be apportioned.

An example of the apportionment problems that may arise is illustrated by the following: A veteran-husband and his wife own a principal residence in one taxing district and own either vacant land or a summer cottage in another taxing district in New Jersey. If neither claims the senior citizen exemption, the husband could elect to apportion the veteran's exemption between the two properties. If a senior citizen exemption is claimed by the husband, it could not be apportioned between the two properties, and, as shown above, it is taken to the exclusion of his veteran's exemption on any property. However, if the wife claims the senior citizen exemption on the dwelling house, the husband may still claim the veteran's exemption on the other property in the full amount or he may claim the veteran's exemption against personal property, as indicated above. However, should the husband desire to apportion his veteran's exemption between the properties in both taxing districts, he can do so provided that the exemptions for himself and his wife on the dwelling house do not exceed \$800 in the aggregate.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: ROBERT L. SHELDON
Deputy Attorney General

JULY 10, 1961

HONORABLE RAYMOND H. BATEMAN
Somerset County Assemblyman
118 West High Street
Somerville, New Jersey

FORMAL OPINION 1961—No. 13

DEAR ASSEMBLYMAN:

You have requested an opinion as to the procedure to be used in filling the new offices on township committees in all townships which have exceeded a population of 4,500 in the 1960 federal census, except those located in sixth class counties (R.S. 40:146-2). The 1960 federal census was promulgated effective May 6, 1961, a date too late for the nomination at the regular primary of candidates for newly established offices.

It is my opinion that R.S. 19:27-11 applies to these circumstances and sets forth the procedure to be followed for selection of candidates. This statute has been considered in an earlier opinion, see Ops. Atty. Gen. No. 53 (1950) in which it is said:

"The obvious intent of R.S. 19:27-11 is to make unnecessary a special primary election in connection with certain vacancies and yet to make available the machinery of the general election for the filling of such vacancies."

This statute is aimed at filling "vacancies" and it must be considered whether the facts at hand present such a "vacancy" within the purview of the statute. In the