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March 9, 1990

Mr. Clyde J. Morgan
Property Tax Administrator
Department of Revenue and Taxation
STATEHOUSE MAIL

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Mobile Home Homestead Exemption

Dear Clyde:

You have asked whether Senate Bill No. 1225, codified at Idaho Code § 55-1001, et seq., restricts the execution of a warrant of distraint against a mobile home for non-payment of property taxes.

The issue presented is the relative priority of an individual's personal property tax obligation versus the protection afforded by the Idaho Homestead Act. It has not before been addressed in our state.

The purpose of Idaho's homestead law is to "protect debtor's [sic] homes from action." Minutes of the Committee of Local Government and Taxation, 2-27-89. The Statement of Purpose for homestead bill S1225, later codified as Idaho Code § 55-1001 provides as follows:

The law currently makes no mention of how a mobile home owner is to declare a homestead. Consequently, courts are consuming time and expense trying to determine mobile home Homestead status on a case by case basis.

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In general, homestead exemptions are designed to preclude seizure and forced sale of people's homes, with the underlying policy considerations of promoting "state stability and welfare through preservation of homes where families may be sheltered beyond the reach of economic fortune." (Emphasis added.) See Comment, Federal Tax Liens and State Homestead Exemptions: The Aftermath of United States v. Rogers, 34 Buffalo L. Rev. 297 (1985).

Since the objective, then, of the exemption is not directed toward classification of the homestead property as real or personal property, but to protect the abode one calls home, a mobile home is exempt from attachment and from execution or forced sale for the debts of the owner up to the maximum homestead amount of \$30,000 to the same extent a residence involving real property would be.

The general rule regarding execution of tax liens against homestead property is that the taxing authority may proceed against homestead property as if no homestead existed. 40 Am. Jur. 2d 110; Iowa Mutual Insurance Co. v. Parr, 189 Kan. 475, 370 P.2d 400 (1962) 94 ALR 2d 960 (1964). Homestead rights are purely statutory and give no greater rights than those granted by the statute. In some jurisdictions, statutes specifically provide that homestead protection does not apply to state or local tax liability.

In Idaho, while Idaho Code § 55-1005 describes certain types of judgments which may reach homestead property, the law makes no reference to the effect of tax liens or warrants of distraint on homestead property. In the absence of statutory classification, resort to the general rule is proper. The following prevails in California, a jurisdiction to which our state often looks for guidance on unresolved issues.

The liability of homestead property for taxes does not differ from that of other property. The state, county, or city, as the case may be, proceeds against it as though there were no exemption law in existence . . . The general homestead exemption from "debts" may not be involved to defeat claims against the holder for taxes and assessments against the homestead property. The homestead is taxable.

Morrison v. Barham, 184 Cal. App. 2d 267, 7 Cal. Rptr. 442, 446 (1960).

The United States Supreme Court has clearly held that state homestead acts do not restrain enforcement of IRS tax liens

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against individuals who are delinquent in the payment of federal taxes. This decision, however, was based upon the objectives of uniformity and prompt and certain collection of taxes, upon the federal government's "sovereign prerogative" over state law, and also on the specific language of I.R.C. § 7403, which provides that the IRS may enforce its lien against any property, of any nature, in which the taxpayer has an interest.

[T]he . . . homestead exemption does not erect a barrier around a taxpayer sturdy enough to keep out the Commissioner of Internal Revenue.

United States v. Estes, 450 F.2d 62, 65 (5th Cir. 1971). See also United States v. Hoffman, 643 F.Supp. 346, 349 (E.D. Wis. 1986).

Notably, Idaho law generally exempts certain property from attachment or levy. Pertinent to this inquiry is Idaho Code § 11-607, which provides:

- (1) Notwithstanding other provisions of this Act:
 - (a) a creditor may make a levy against exempt property except property described in section 11-603, Idaho Code, to enforce a claim for:

. . . .

3. state or local taxes.

Idaho Code § 63-3058 provides that in the case of income tax delinquency, "[p]roperty exempt from distraint shall be the same property as is exempt from execution under the provisions of chapter 6, title 11, Idaho Code." The effect of this provision is to allow execution of claims for income taxes against an individual's property, except (1) personal and family burial plots, (2) health aids, (3) social security, public assistance, unemployment or veterans benefits, or (4) medical benefits. Section 11-607 applies to all other property and allows attachment or levy against an individual's property for state or local tax delinquency.

Following the maxim of statutory interpretation that "expressio unius est exclusio alterius," it is clear that because homestead exemption is not included in property exempt from execution for state or local tax claims, it was the intention of the legislature to exclude it.

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Further, ad valorem taxes are levied under authority of article 7, § 2, of the Idaho Constitution, which provides in pertinent part:

Revenue to be provided by taxation.

The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person or corporation shall pay a tax in proportion to the value of his, her, or its property, except as in this article hereinafter otherwise provided.

This constitutional provision makes state and county taxes a superior lien to all other claims and liens. Smith v. City of Nampa, 57 Idaho 736, 744, 68 P.2d 344 (1937).

The state's interest, then, in enforcing claims against a delinquent taxpayer by executing against his property does not arise out of the privileges of an ordinary creditor, but from the express terms of the Idaho Constitution. The state or county may proceed on a warrant of distraint against homestead property as if there were no homestead exemption.

Sincerely,

DANIEL G. CHADWICK
Chief, Intergovernmental
Affairs Division